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THE FRENCH ADMINISTRATIVE COURTS

IN France, at the present time, in accordance with a theory and practice recently sustained in a series of notable decisions, all suits arising in connection with the operation of a public service are withdrawn from the cognizance of the ordinary courts and are subjected to the exclusive jurisdiction of the so-called administrative courts (*juridictions administratives*), composed of officers belonging to the administrative organization. It would be difficult, nevertheless, to find a country in which the individual is more energetically protected than in France against arbitrary administrative action. As a result of the liberality with which the Council of State admits complaints against acts *ultra vires* and the extent to which it insists upon the responsibility of the juristic persons of the public law, the individual enjoys, in France, a high degree of protection against illegal, improper or imprudent acts of the administration, and even against injury which he may suffer as a result of the normal operation of a public service.

To foreigners, and particularly to Anglo-Saxons, who are inclined to assume that the individual can be protected against the administration only by giving wide competence and strong organization to the ordinary courts of justice, the foregoing statements may seem paradoxical. The French system is the product of a peculiar and rather complex development, determined by the action of various factors. I am indebted to the editors of this Quarterly for the opportunity to sketch the main lines of this development and to indicate the protection afforded to individuals by the French administrative court.

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I. *The principle of administrative jurisdiction, under the laws of the revolutionary period*

The assemblies of the French Revolution entertained a conception of the separation of powers which they thought they found in Montesquieu. It differed considerably from the American conception. It was particularly characterized by the rôle attributed to the judicial power.

At the very beginning of the famous sixth chapter of book xi of the *Spirit of the Laws*, Montesquieu had written:

> In every state there are three kinds of powers: the legislative power; the executive power that deals with matters depending on the law of nations; and the executive power that deals with matter depending on the civil law. . . . By the third [the prince] punishes the crime or adjudicates the controversies of individuals. This last will be termed the power of judging.[1]

In Montesquieu's mind, accordingly, the judicial power had to do solely with the repression of crimes and the determination of controversies between individuals, or private suits. Precisely the same character is attributed to this power in the laws passed by the National Assembly of 1789, in the constitutions of 1791 and of the year III, and in the laws adopted under these constitutions. Citations might easily be multiplied to show beyond a doubt that the National Assembly of 1789 invariably regarded the judiciary solely as the organ charged with the adjudication of controversies between individuals. As early as August 1, 1789, Deputy Thouret, who played a leading part in drafting the political laws of 1789–1791, remarked, in the committee on constitution: "The public powers are divided into four different classes or kinds. . . . The execution of the laws relating to suits and property rights of citizens necessitates the establishment of judges; hence the courts of justice, in

[1] "Il y a dans chaque Etat trois sortes de pouvoirs; La Puissance Législative, la Puissance Executrice des choses qui dépendent du droit des gens et la puissance executrice de celles qui dépendent du droit civil.....Par la troisième [le Prince] punit les crimes ou juge les différends des particuliers. On appellera cette dernière la Puissance de Juger."

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which resides the judicial power."[1] The same idea was very clearly expressed, in March, 1790, by one of the most influential members of the Assembly, Deputy Duport. In his "Plan for the Establishment of the Judiciary," he wrote:

Two kinds of laws must be distinguished in a society: political laws and civil laws. The former embrace the relations of the individuals with the society and those of the different political institutions with one another. The latter determine the particular relations of individuals to individuals. It is for the application of these latter laws that the judges are *specially* and *solely* instituted. As regards the political laws, never can their execution be entrusted to the judges without jeoparding public and individual liberty. . . . I have stated that the judges were instituted only to apply the civil laws.[2]

From this notion of the judicial power followed logically the principle of what we call "administrative jurisdiction" (*le contentieux administratif*). All matters, even matters of controversy, which do not involve the application of the civil laws, are necessarily withdrawn from the competence of the ordinary courts. All administrative matters, including matters of controversy, are to be determined by the administration itself; and the ordinary courts must in no wise interfere in the administration, not even under the pretext of adjudicating suits that arise between it and individuals. Conversely, it must be said that the administration is not to encroach upon the field of the judicial power.

There is no lack of texts belonging to the revolutionary period that sanction these principles. The law of September 7, 1790, gives quite a list of administrative controversies,

[1] "Les Pouvoirs Publics, se divisent en quatre classes ou espèces différentes..... l'exécution des lois qui ont pour objet les actions et les propriétés des citoyens nécessite l'établissement de juges; de là, les Tribunaux de Justice, en qui réside le Pouvoir Judiciaire." Archives Parlementaires, 1ère série, viii, p. 326.

[2] "Il faut distinguer dans une société deux sortes de lois: les lois politiques et les lois civiles. Les premières embrassent les relations des individus avec la société ou celles des diverses institutions politiques entr'elles. Les secondes determinent les relations particulières d'individus à individus. C'est pour appliquer ces dernières lois que les juges sont *specialement* et *uniquement* institués. A l'égard des lois politiques, jamais l'exécution ne peut être confiée à des juges sans que la liberté publique et particulière soit en peril.....J'ai dit que les juges n'étaient institués que pour appliquer les lois civiles ....." Archives Parlementaires, 1ère série, xii, pp. 410, 411.

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notably claims arising in connection with public works and taxation, of which it assigns the determination to the district and departmental administrations. The law of April 27, 1791, article 15, gives to the ministers—*i. e.* to the heads of the working branches of government, assembled in Council of State—full competence to deal with controversies in all administrative matters. Nor is this all. The important law of August 16, 1790, affirms: "The judicial functions are distinct and remain always separate from the administrative functions."[1] The constitution of 1791 declares, in one chapter: "The officers of administration may take no action that trenches upon the judicial domain;"[2] and in another chapter: "The courts may take no action that trenches upon the administrative functions."[3] The constitution of the year III provides: "The administrative authorities may not interfere in matters pertaining to the judiciary;"[4] and in a subsequent section: "The judges may not summon administrative officers into court on account of the exercise of their functions."[5] Take, finally, the law of 16 Fructidor of the year III, which sums up all the earlier provisions in terms of energetic brevity: "The courts are forbidden anew to take cognizance of acts of administration, whatever their nature."[6] This legislation was rounded out by the law of 21 Fructidor of the year III, which laid down the rule: "In case of conflict of competence between the judicial and administrative authorities, proceedings shall be stayed pending the decision of the minister confirmed by the Executive Directory."[7]

[1] Sec. ii, art. 16: "Les Fonctions Judiciaires sont distinctes et demeurent toujours séparées des Fonctions Administratives."

[2] Tit. iii, chap. iv, sec. ii, art. 3: "Les Administrateurs ne peuvent rien entreprendre sur l'ordre Judiciaire."

[3] Tit. iii, chap. v, art. 3: "Les Tribunaux ne peuvent rien entreprendre sur les Fonctions Administratives."

[4] Art. 189: "Les Administrations ne peuvent s' immiscer dans les objets dependant de l'ordre Judiciaire."

[5] Art. 203: "Les Juges ne peuvent citer devant eux les Administrateurs pour raison de leurs fonctions."

[6] "Defenses iteratives sont faites aux Tribunaux de connaître des actes d'Administration de quelque espèce qu'ils soient."

[7] Art. 27: "Au cas de conflit d'attribution entre les autorités judiciaires et administratives, il sera sursis jusqu' à décision du Ministre confirmée par le Directoire Executif."

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II. *The Council of State and the law of May 24, 1872*

This, then, is the system of the revolutionary period: the courts may take cognizance only of controversies between individuals; they cannot pass on any claim arising in connection with an administrative act of any sort whatever. In such cases the administration alone is competent. It is accordingly not only party but judge in its own cause.

Such a state of law could not long remain intact; and the legal evolution which took place in France in the course of the nineteenth century ended in the establishment of a high court, administrative as regards the origin of its membership but absolutely independent of the executive power, passing with final authority and with absolute impartiality upon all claims made against the administration, and thus ensuring to individuals injured or menaced by arbitrary administrative action a protection much more complete and much more certain than they could find in the competence of the ordinary courts.

Of course this development did not take place in a day. It is the outcome of efforts which lasted nearly a century. As early as the Consulate there was an attempt to develop administrative courts, distinct from the working administration, charged with the duty of deciding certain administrative suits, such as cases of taxation and of public works. These are the councils of the prefectures, established by the law of 28 Pluviôse of the year VIII. These, however, are in the hands of the prefects, who preside over them with controlling voice, and they have only a nominal competence. The decision, as a matter of fact, is left with the prefects.

It is true, of course, that the constitution of the year VIII created the Council of State and gave this body, among other powers, that of "settling such difficulties as arise in administrative matters." The decree of June 11, 1806, established a judicial committee (*commission du contentieux*), which was authorized to submit to the Council in general assembly reports on matters of controversy. This was the embryo of the Council of State organized as a court. This committee, however, exercised only what is traditionally described as a limited judicial power (*justice retenue*). It gave nothing more than advice,

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even in matters of controversy, and legally the decisions still belonged to the government. The executive power remained judge of the legality and of the results of acts performed by its agents.

Under these circumstances two distinct movements developed: on the one hand, a movement aiming at the complete suppression of administrative jurisdiction and the submission of all suits, even those arising in connection with administrative acts, to the cognizance of the ordinary courts; and, on the other hand, an effort, which found expression in judicial decisions and in the legal literature, to limit, without formal change in the written law, the number of suits arising in connection with administrative acts which were to be withdrawn from the cognizance of the ordinary courts and referred to the decision of the administration. This latter result was to be obtained by drawing a distinction between different administrative acts: it was asserted that all suits arising in connection with an administrative act described as an "act of management" (*acte de gestion*)[1] were within the competence of the ordinary courts, unless an express provision of the written law reserved their decision to the administration.

This movement was not successful. In France, at the present time, no distinction is made, either in judicial decisions or in the legal literature, between the so-called "acts of authority" and "acts of management" as regards jurisdiction over administrative controversies. In the decisions and in the literature alike the administrative courts are recognized as competent to pass upon all claims arising in connection with an administrative act, provided always that the act itself is connected with the operation of a public service.

The movement for the complete suppression of administrative jurisdiction also failed to realize its immediate purpose. In fact, the direct result was quite opposite, in that the domain of

[1] The acts designated by this phrase were those which, although performed by the administration, belong primarily to private law, such as sale, lease etc. This second movement was too complicated to be described in this article; and the writer begs to refer the reader, for fuller information, to his book entitled: Les Transformations de droit public (Paris, Armand Colin, 1913), pp. 149 *et seq.*

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administrative jurisdiction was enlarged and, so to speak, consolidated. Indirectly, however, this movement led to the formation, in the Council of State, of a powerful administrative court, which, by virtue of the independence of its members and the authority attributed to its decisions, gives every possible guaranty to individuals affected by administrative action.

The movement aiming at the suppression of administrative jurisdiction found its first expression in an article by the Duke de Broglie, published in the *Revue Française*, March, 1828. From this date down to 1872 the suppression of administrative jurisdiction formed an essential part of the Liberal program. In behalf of the great committee on decentralization appointed by the National Assembly in 1871, M. Lefebvre-Pontalis submitted, June 4, 1872, a long report on a bill which was to suppress the councils of the prefectures and to transfer to the ordinary courts such suits as were within the competence of these councils. The National Assembly, however, adjourned without passing this bill, and the councils of the prefectures are still in existence.

By the law of May 24, 1872, the Assembly reorganized the Council of State and conferred upon it "delegated judicial power" (*la justice déléguée*), that is, the right of independent decision in matters requiring adjudication. It conferred upon this body general and supreme competence by a provision which should be cited in full: "The Council of State renders final decision in administrative controversies and upon all suits to annul, as in excess of power, the acts of the various administrative authorities." [1]

Thus the Third Republic, like the Empire, the Monarchy, the Republic of 1848 and the Second Empire, upheld the system of administrative jurisdiction. The movement for its suppression was a complete failure. There were many reasons why it could not succeed. In the first place, there continued to be a strong feeling that every administrative act is a manifestation of executive power and that the ordinary courts cannot be per-

[1] "Le Conseil d'Etat statue souverainement en matière contentieux administrative et sur les demandes d'annulation pour excés de pouvoir formées contre les actes des diverses autorités administratives."

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mitted to interfere with the action of the government. In addition to this, there was making its way unconsciously into the public mind the notion of public service. The close connection between administrative action and the management of the public service was coming to be realized, and there was increasing unwillingness to permit the ordinary courts to interfere with this management.

While the movement aiming at the suppression of administrative jurisdiction failed to attain its direct aim, it nevertheless achieved one important result. In 1872, as has already been indicated, the Council of State was empowered to render independent decisions in matters of controversy; it became a court of last instance. Today it is universally recognized as the common-law court (*la juridiction de droit commun*) [1] in administrative matters. The councillors of state are, by virtue of the constitutional law itself,[2] appointed by executive decree, with the advice and consent of the council of ministers, and they can be removed only in the same manner. Their positions are in fact permanent; since 1879 not a single councillor of state has been arbitrarily removed. Nor is the government free to select councillors of state at its pleasure, for one-half of the seats in the Council must be filled by *maîtres des requêtes* and three-fourths of these *maîtres des requêtes* must be *auditeurs de première classe*.[3]

The organization of the Council of State as a court is quite distinct from that of the Council of State as an administrative body. All the purely administrative elements in the council, ministers, councillors of state assigned to special service (*en service extraordinaire*), are excluded both from the general assembly and from the separate sections that hear and decide cases. The French Council of State is thus in reality a court that affords every guaranty of knowledge, independence and impartiality. It is composed of members who are described as administrative judges (*magistrats administratifs*): judicial

[1] In France "common law" (*droit commun*) means the general law, whether determined by statutory enactment or by the decisions of the courts.—TRANSLATOR.

[2] Loi du 25 Février, 1875, art. 4.

[3] Loi de finances du 13 Avril, 1900, art. 24, par. 3; loi de finance du 8 Avril, 1910, art. 97, par. 2.

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officers from the point of view of their practical permanence of tenure and their independence, administrative officers as regards the source from which they are drawn. Because they are originally administrative officers, they are familiar with the problems of administration; they understand its difficulties and its needs. For the same reason they do not arouse in the governmental mind the distrust or jealousy which judges of the ordinary courts might inspire; and, on the other hand, they confront the government without that timidity which is not infrequently displayed by the ordinary judges. As a matter of fact, whenever, as a result of the complicated interplay of the rules determining competence, the Court of Cassation has had occasion to decide administrative cases, it has invariably rendered decisions less favorable to the individuals affected by administrative action than those rendered by the Council of State in similar cases.

Having thus become a supreme common-law court for administrative cases, the French Council of State, especially during the last twenty years, has been working out a remarkable body of case law, which affords to the individual almost perfect protection against arbitrary administrative action—a higher degree of protection, I think I may affirm, than in any other country. This body of case law deals with three principal topics: acts *ultra vires* (*excès de pouvoir*); misapplication of power (*détournement de pouvoir*); and the liability of the administration to individuals.

III. *Acts ultra vires*

The statutory provision, already cited,[1] declares that "the Council of State renders final decision in administrative controversies and upon all suits to annul, as in excess of power, the acts of the various administrative authorities." This provision gave statutory recognition to a body of case law which was in process of elaboration in 1872, and it furnished the starting-point for an extensive development of relief against acts *ultra vires*, as regards the authorities whose acts are subject to attack, as regards the acts which may be attacked, as regards the

[1] Loi du 24 Mai, 1872, art. 9.

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grounds upon which the application for annulment may be based, as regards the persons who may make such application, and as regards the results produced by the decision of the case.

On the plea of *ultra vires*, complaint is admissible against the unilateral act of any administrative authority, from the humblest to the highest. Exempt from attack, of course, are the acts of judicial authorities, even in non-controversial matters. The same is true of the acts of Parliament, even when, exceptionally, these are administrative acts, special decisions. There is, however, no other authority in France whose acts are not subject to the judicial control of the Council of State. The president of the Republic himself is placed under this control. The Council of State, sitting as a court, does not hesitate to quash the decisions of the head of the state when it finds therein any violation of law. The act in question must, of course, be one which the president has performed *qua* administrative authority. In this respect there has been a development in our law which was completed only a few years ago.

When the head of the state performs individual acts—when, for example, he issues a decree of appointment or of removal—he has always been regarded as an administrative authority, and such acts have always been open to attack as *ultra vires*. Not without difficulty, however, was the same solution admitted as regards regulative acts; in particular, the Council of State refused to permit general administrative regulations to be attacked as *ultra vires*—regulations, that is to say, which were issued by the head of the state in accordance with the advice of the Council of State deliberating in general assembly, and on the invitation of Parliament. In a decision rendered December 6, 1907, however, the Council of State recognized that recourse could be had against acts of this character, and at the present time applications to the high court for the annulment of such acts are received without question.

Despite this evolution, however, it must be remembered that the president of the Republic does not act always *qua* administrative authority, and that acts performed by him in a different capacity are exempt from attack in the Council of State on the ground of lack of power. This is the case when the head of

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the state exercises the powers which the constitution gives him and which concern his relations with Parliament: when, for example, he determines the date of Parliamentary elections, calls the Chambers together in extraordinary session, adjourns them, announces the closing of the parliamentary session or dissolves the Chamber of Deputies. In such instances he is not acting *qua* administrative authority, and his acts are subjected to the exclusive control of Parliament. It is of course inconceivable that any court whatever should be entitled to interfere in the relations of the two political powers. Again, the president of the Republic does not act *qua* administrative authority when he exercises his diplomatic powers, and acts performed by him in this capacity are not subject to the judicial control of the Council of State.

In spite of these reservations it is clear that the field within which acts may be attacked as *ultra vires* is very wide. It is the wider, because, more than thirty years ago, the Council of State and the Tribunal of Conflicts[1] definitely rejected a conception which at an earlier period was held in great respect—the conception of the "governmental act" (*acte du gouvernement*). Under another name, this conception is still honored in Germany. It was asserted that any act performed by the government, or by a subordinate administrative authority in compliance with an order of the government, was wholly exempt from attack, however flagrant its illegality, if the purpose for which the act was performed was political. Thus, for example, in 1867, the Council of State refused to entertain proceedings brought against the seizure of the works of the Duke d'Aumale, made by the prefect of police and approved by the minister of the interior. It dismissed the complaint on the ground that the considerations controlling the act in question were political.

At the present time, however, it is the settled practice of the Tribunal of Conflicts and of the Council of State to reject all such pleas for dismissal of complaints. In a series of decisions rendered in November, 1880, the Tribunal of Conflicts held that the decrees of March 29, 1880, directed against the re-

[1] *Cf. infra*, p. 401 *et seq.*

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ligious congregations, had not the character of governmental acts, and that the parties affected should be admitted to attack these decrees as issued without legal authority. In 1887 the Council of State itself also categorically rejected the monarchic theory of the governmental act. This it did in proceedings brought by the Orleans princes and by Prince Murat against decisions by which the minister of war had removed their names from the official registers of the army. The minister of war asked that the complaints be dismissed on the ground that the decisions attacked had been rendered for reasons exclusively political. The Council of State rejected this plea, declared both complaints admissible and sustained that of Prince Murat on its merits.

In 1889, the Tribunal of Conflicts reaffirmed the position it had taken in 1880. It rejected the doctrine of the governmental act in three decisions, recognizing the competence of the ordinary courts to inquire into the validity of seizures of pamphlets and portraits of the Count of Paris, made by prefects under the instructions of the minister of the interior. Not even these instructions, the court held, could give the seizures in question the character of a governmental act.[1]

Finally, in a recent decision, rendered March 25, 1911, the same tribunal recognized the competence of the ordinary courts to pass upon the liability of the French minister to Hayti, who, after various incidents, had refused to unite in marriage two French citizens. That his refusal might have been based on political considerations the court declared to be irrelevant.[2]

All administrative action is thus subjected to a judicial control, brought into operation chiefly by application for the annulment of acts *ultra vires*. This application may be made by any interested party. The applicant is not held to prove the existence of a right, alleged to be infringed by the act which he attacks; he has to show only that he has an interest in the annul-

[1] "Considérant qu'en admettant que les instructions [du Ministre] eussent été données, elles ne sauraient imprimer au mandat et à la saisie le caractère d'acte de gouvernement..."

[2] "Qu'il importe peu ... que le refus opposé aux parties puisse être inspiré par des considérations d'ordre politique."

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ment of the act, and a simple moral interest, even indirect, is sufficient. In the appreciation of such interests the Council of State displays great liberality. For instance: it permits any taxpayer to object to the consideration, by a municipal council, of an undertaking which is not within its conceded competence and which accordingly may burden the commune with an irregular expenditure. It also permits any individual who holds the titles and diplomas required for nomination to a public position (*fonction*) to attack any irregular nomination to such position; and it permits professional associations of public functionaries to attack any nomination, promotion, removal, suspension or transfer to an inferior position alleged to be in violation of the law governing the service in question. One has but to open the Council of State reports (*Recueil des arrêts du Conseil d'Etat*) to find numerous decisions sustaining such complaints.

In appreciating the sufficiency of the grounds for annulment, the administrative high court of France again takes a very broad and very liberal view. It admits recourse against acts as *ultra vires*, not only when a law determining competence has been violated or when the proper forms have not been observed, but also when there has been any violation of the general substantive law. For a time it was held that recourse could be had, on this last ground, only when there was infringement of a vested right. To-day, however, this restriction has wholly disappeared; and whatever be the ground of recourse, the conditions on which it is admitted are the same.

Finally, the Council of State has constructed the marvellous doctrine of the misapplication of power, something analogous to which may indeed be found in certain foreign countries, but which has nowhere had the remarkable development that has been given to it in France.

IV. *Misapplication of power*

The doctrine of the misuse or misapplication of power (*détournement de pouvoir*) serves to round out, in a very happy fashion, the protection of the individual against arbitrary administrative action. In accordance with this doctrine the Council of State annuls the acts of administrative authorities,

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not solely when they involve a technical violation of a law of competence, of a law of form or of a substantive law, but also when, although they contravene no express legal provision, they are performed by the administrative agent for a purpose other than that which the law had in view when it conferred upon him his competence. It is in such instances that there is said to be misapplication (*détournement*) of power. As a result of this development, there is no longer any such thing as administrative "discretion," since the motives determining the action of the administrative authority may always be subjected by the parties interested to the judicial control of the Council of State. For a long time it was held that the majority of administrative acts were discretionary, which signified that they could not be attacked when they were done in legal form by competent authority, and that the purpose for which they were done was immaterial. In numerous decisions of the Council of State, some of them rendered not more than forty years ago, proceedings for the review of acts alleged to be *ultra vires* were dismissed on the ground that "the decision attacked is an act of pure administration, which is not of a sort to be subjected to review by the Council of State in the way of controversial procedure." These acts of pure administration correspond to what the Germans call acts of "free appreciation" (*freies Ermessen*). In France the discretionary act belongs to the past: it has no place in the law of today. The Council of State is always competent to consider the propriety of the purpose for which the act was done; and it does not hesitate to declare it null if it finds that the administrative agent, although he has not overstepped the formal limits of his competence, has pursued an end other than that which the law had in view in giving him such competence.

In some recent and particularly characteristic instances, the Council of State has applied this doctrine in a very definite way.

It annulled, on the ground of the misapplication of power, a decree by which the government, invoking a provision of the municipal law of April 5, 1884, dissolved a municipal council, in order to secure the correction of irregularities alleged to have occurred in the course of the elections. The government can

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decree the dissolution of a municipal council, but it can do this only to ensure the proper conduct of the communal administration. Accordingly there was a misapplication of power, equivalent to action *ultra vires*, when the government performed an act, which beyond a doubt was formally within its competence, for a purpose which it could not seek to attain by this means.

The Council of State quashed a decision of the minister of war—the position was held at the time by General André—excluding a grain dealer from bidding for or receiving award of contracts for military supplies, because this dealer held political and religious opinions which the general disliked. The Council annulled the decision "in view of the fact that the action of the minister was based on motives foreign alike to the awarding of such contracts and to the position or professional capacity of the merchant."

It is not practicable, within the limits of this article, to cite all the decisions annulling orders of municipal authorities on the ground of misapplication of power. A typical decision is that annulling an order of the mayor of Denain, who, under the pretext of exercising his disciplinary power, attempted to take political revenge by suspending a police agent, said agent having (very properly) formulated a complaint against the keeper of a tavern in which the mayor's political committee was accustomed to meet. Typical again are numerous decisions annulling orders of mayors who, inspired by anti-religious zeal, forbade the clergy to wear priestly vestments in attending funerals, or who, under color of regulating the ringing of church bells, forbade or narrowly limited ringings preliminary to church services.

In many of these decisions a new rule seems to be taking form—a rule which will open the door more widely to complaints of misapplication of power. Heretofore the complainant has been held to bring direct and positive proof of the existence of a reason foreign to the service and determining the action of the administrative authority. In decisions rendered in the last few years it seems to be implied, on the contrary, that it is enough for the complainant to show that the reasons which should exist in order to justify the administrative act did not exist in fact. The complainant has not to prove that the reason

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which really determined the action of the administrative authority was foreign to the service; it is enough for him to prove that the reasons which could properly determine such action did not in fact exist. There is here, obviously, no change in the nature of the remedy against misapplication of power; but the employment of the remedy is facilitated, and the judicial control exercised over the active administration by the Council of State has received a further extension.

V. *Responsibility of administrative authorities as juristic persons*

Relief against acts *ultra vires* and relief against misapplication of power are not the only means by which the Council of State protects individuals against the administration. It has also seen its way greatly to extend, of late years, the responsibility of the various public services to all those who suffer harm from the operation of these services—even from their normal operation.

During the greater part of the nineteenth century it was primarily a question of jurisdiction that was raised. All the legal writers maintained that, in cases in which the administration might be held liable to individuals, the ordinary courts were alone competent to pass upon its liability. This was the period in which administrative jurisdiction was still regarded with mistrust. The Council of State had not yet received a right to find its own judgments in matters of controversy, and the writers of treatises endeavored in all possible ways to restrict the field of administrative jurisdiction. They tried to show that; when a question of administrative liability was raised, no review of an administrative act as such was involved, but only the ascertainment of a simple fact and of its consequences. The question to be decided was purely one of civil law, namely, whether articles 1382 *et seq.* of the Code Napoléon were applicable.[1] Conse-

[1] In the sections cited, the provisions on which administrative liability could be based are substantially as follows: Every one is liable for damages occasioned by his fault (1382). Negligence and lack of foresight constitute fault (1383). For damages occasioned by the fault of servants or employees, masters and employers are liable, unless it be shown that they could not have prevented the injuries (1384). For damages done by animals the owners, or those who are using the animals, are liable (1385). For damages resulting from defective construction of buildings or from failure to keep them in repair the owners are liable (1386).—TRANSLATOR.

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quently, the ordinary courts had exclusive jurisdiction. Under the Second Empire two decisions of the Court of Cassation recognized the competence of the ordinary courts to entertain and decide liability suits brought against the state.

In the celebrated Blanco case, however, a decision of the Tribunal of Conflicts (established in 1872) recognized the competence of the administrative judges to hear and decide such a suit against the state. In this case the action was brought to recover damages for the accidental injury of a child employed in the governmental manufacture of tobacco at Bordeaux. On the first hearing the judges were equally divided; the decision was rendered February 1, 1873, after a rehearing in which M. Dufaure, keeper of the seals, participated as president of the tribunal. This decision was accepted by the Court of Cassation; and since the Blanco case it has been the settled rule that the administrative courts—actually the Council of State in first and last instance, unless the case arises in connection with the conduct of public works—are competent to hear and decide all suits against the state arising from the operation of a public service. The ordinary courts are competent to pass upon the liability of the state only when the suit arises in the field of private law.[1]

It was only after long hesitation that the Tribunal of Conflicts recognized the competence of the Council of State to determine the liability to individuals of administrative entities other than the state, i. e. the liability of departments, of communes and of public establishments. At length, in 1908, this assimilation was made by a decision of the Tribunal of Conflicts, in the Feutry case. This decision, like that in the Blanco case, was rendered after equal division and on a second hearing under the presidency of M. Briand, keeper of the seals. It carried to a further point the development that began in the Blanco case, in that it affirmed the competence of the administrative court to decide a suit for damages brought against a department.

It is not within the scope of this article to give even a brief

[1] *Cf. infra*, p. 406.

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résumé of the controversies which ended in this solution. The rule finally established marks a distinct advance in French public law. If the decision of suits brought against the various branches of the administration had been assigned, not to the Council of State, but to the ordinary courts, the liability of the public services would certainly not have received the great extension which the decisions of the Council of State have given it.

It is true that the high court does not yet go so far as to recognize any liability of the state arising in connection with acts of Parliament or acts of judicial officers. It is also true that the way is open for this further step, and perhaps the day is not far distant when it will be taken; but at present this goal has not been reached. On the other hand, as regards the non-judicial acts of administrative authorities there has been a great extension of public liability. From whatever administrative organ or agent the act may proceed, public liability may be involved, whether the act emanate from the highest authority, the president of the Republic in whom the state is personified, or from the humblest of its employees. The character of the act, too, is of little consequence, provided always that it be not judicial. It is of little consequence whether it be a regulative act, an administrative act affecting the rights of an individual or a material operation. No distinction is drawn between so-called acts of authority, for which the state is not to be responsible, and so-called "acts of management," which alone are to entail liability. Admitting the legitimacy of the distinction, acts of either sort impose, under the same conditions, the same liability upon the state.

A last stage in this movement has recently been traversed. It seems that to-day the Council of State recognizes the liability of the administration even in cases where there has been no fault in the conduct of the public service. It is true that in the decisions there is still mention of "fault of service;" but this phrase is not used to describe a fault which may be imputed to the public service as a fictitious person; what is meant is the fault of which an agent has been guilty. Sometimes faults of this sort are found to exist, and the Council of State leans on them in rendering a decision against the administration, whether

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there has been a violation of law or negligence or lack of foresight on the part of the agent. Sometimes, again, no such fault appears, and yet the Council recognizes the liability of the administration. Then we have something that looks like an insurance of the individual against damages resulting from the operation of a public service, even from its normal operation—insurance against what has been correctly described as the administrative risk.

It will not be amiss to cite a few of the most characteristic decisions of the Council of State. It is in matters of police administration that the high court has been induced most frequently to recognize public liability. In 1905 the Council applied the principle of state responsibility to the case of a shot fired by a gendarme to stop a mad bull in an Algerian town. In 1910 it recognized that the state was responsible because of accidental injury inflicted on a wayfarer by a police agent in pursuit of a malefactor. There was in reality no fault on the part of the agent, who was simply doing his duty; the injury suffered by the wayfarer was a matter of pure chance. The police service was functioning normally; there was no fault of service; but nevertheless the administration was held liable.

Can it be asserted, in view of these decisions, that the protection of the individual against the administration is not satisfactorily organized in France? There is perhaps no country in the world where it is so solidly organized. We have still to consider, however, the working of one part of the system, not yet described—the Tribunal of Conflicts.

VI. *The Tribunal of Conflicts and the personal liability of officers*

The creation of this important tribunal goes back to the period when distrust of administrative jurisdiction was still very strong. What was intended was to constitute a court, affording every guaranty of independence and of impartiality, to decide conflicts that might arise between the administration and the ordinary courts of justice concerning their respective powers.[1]

[1] *Cf.* Duguit, Traité de Droit constitutionnel, i, p. 446.

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The law of 21 Fructidor of the year III assigned the decision of such conflicts to the Executive Directory, under the control of the legislative power. By this law the government in fact obtained the right to withdraw cases from the ordinary courts whenever it chose. After the constitution of the year VIII had created the Council of State, the government took the opinion of this body before rendering decision; and from the year VIII to 1850 conflicts of competence were decided by the government in Council of State. In these matters, as in the exercise of its administrative jurisdiction, the government in fact always adopted the opinion of the Council. In spite of this practice, the system was bad, since it gave the decision of conflicts of competence to a body purely administrative in its composition. Particularly under the Restoration, abuses were so numerous and so flagrant that it was deemed necessary to issue the ordinance of June 1, 1828, to regulate procedure in cases of conflict and to diminish the number of conflicts. The principle, however, on which the system was based was left unchanged.

The constitution of 1848, article 89, formulated the principle which governs the existing system: "Conflicts of competence between the administrative authority and the judicial authority shall be determined by a special tribunal." The law of February 4, 1850, and the regulation of October 26, 1849, organized this tribunal and regulated its procedure. This first Tribunal of Conflicts, however, had but a brief existence. It disappeared in consequence of the *coup d'etat* of December 2, 1851. Throughout the period of the Second Empire the government decided conflicts of competence in Council of State. Finally, the law of May 24, 1872, article 25, reëstablished the Tribunal of Conflicts in the form in which it exists today. The article reads, in part, as follows:

> Conflicts of competence between the administrative authority and the judicial authority are determined by a special tribunal composed: (1) of the keeper of the seals, as president; (2) of three councillors of state in ordinary service, elected by the councillors of state in ordinary service; (3) of three judges of the Court of Cassation, appointed by their colleagues; (4) of two members and two alternates elected by the majority of the other judges. . . . The members of the Tribunal of

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Conflicts are subject to reëlection every three years and are indefinitely reëligible. They elect a vice-president. . . . Their proceedings are valid only when at least five members are present. The government appoints commissioners of the government, chosen from among the *maîtres des requêtes* in the Council of State and the *avocats généraux* in the Court of Cassation.

The system which assigns the determination of conflicts of competence to a court composed of such elements affords ample guaranties to all parties concerned. In fact, this court is a part neither of the ordinary judicial organization nor of the administrative organization. It is composed of judges who belong to the two highest courts of the country; who are selected, not by the government, but by their colleagues; and who themselves complete the organization of the court by selecting two other judges according to their free discretion. The government intervenes only by the nomination of its commissioners and by the presidency of the keeper of the seals, which is easily justified. Granting that all courts should be independent of the government, it is still the duty of the government to secure the efficient working of the service of justice; and this, evidently, is the rôle assigned to the Tribunal of Conflicts, since it is charged with the duty of securing the application of a rule which is regarded as essential to such efficient working.

It is generally believed in France, at the present time, that the arrangements above described amply protect litigants against any attempt on the part of the government arbitrarily to withdraw cases from the ordinary courts. It has already been shown that the Tribunal of Conflicts, by firm and independent decisions, has discarded the ancient theory of the non-reviewable "governmental act." It has been shown, in particular, that this tribunal has decided that the ordinary courts are exclusively competent to determine the regularity of seizures made by prefects, although these officers were exercising powers conferred on them by article 10 of the code of criminal procedure and were even acting under direct orders from the government; and that it has affirmed the competence of the ordinary courts to determine the responsibility of a diplomatic agent who had refused, without legitimate motive, to solemnize the marriage of two French citizens in a foreign country.

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The business of the Tribunal of Conflicts has been steadily diminishing. As long as the administrative courts were regarded with a degree of mistrust, litigants preferred to bring their complaints before the ordinary courts. The government was naturally inclined to contest the jurisdiction of these courts, and the Tribunal of Conflicts had frequently to intervene, in order to defend impartially the boundary between the judicial field and the administrative field. Today, on the contrary, the French people has complete confidence in the knowledge, impartiality and independence of the Council of State. The litigant knows that he is better protected against arbitrary administrative action by the Council of State than by the Court of Cassation. Accordingly, he prefers to submit his case directly to the high administrative court, in cases in which at an earlier period he would have applied to the ordinary courts.

There is, however, a class of liability cases in which the Tribunal of Conflicts plays an important rôle, but a rôle which may be said to be foreign to the purpose for which it was brought into existence. The French courts now uniformly hold that administrative officers are personally liable to individuals for their personal faults, and that, since the decree of September 19, 1870, they may be sued for damages on account of such personal faults in the ordinary courts; but that in case of fault of service the administrative entity, as a juristic person, is alone liable, and that in such a case the action for damages should be brought in the Council of State. As a result of this distinction, it often happens that when suit for damages is brought against an officer in an ordinary court, the competence of the court is contested. The question thereby raised is, in reality, whether the facts (assuming them to be established) show personal fault of the officer or fault of service. If there is fault of service, it is not the officer who is liable, but only the administrative entity. Accordingly, when the case is carried up to the Tribunal of Conflicts, the question to be determined by that court is not, properly speaking, one of competence, but one of liability. It has to decide whether the facts alleged show such personal fault on the part of the officer as to make him personally liable. If it so decides, it annuls the order for

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stay of proceedings (*arrêté de conflit*), and the suit follows its course in the ordinary court. If the Tribunal of Conflicts reaches the opposite conclusion, it upholds the stay; which signifies that, in its opinion, the facts alleged show a fault of service for which the administration as such is liable and on which it may be sued in the Council of State.

As a result of this free development of its own rôle by the Tribunal of Conflicts, the intervention of this court has rounded out, in a very satisfactory manner, the judicial protection of the individual affected by administrative action. Without need of legislative intervention, in the normal and progressive functioning of institutions, the individual is safeguarded in France by the efficient enforcement of the responsibility both of the administrative services and of the administrative officers themselves. The delicate point to be decided is whether the facts presented establish personal fault or fault of service; and on this point the decision is entrusted to a court which affords all possible guaranties of independence and of impartiality.

I end, as I began, by saying that administrative jurisdiction, which, in the thought of the lawmakers of the revolutionary period, was undoubtedly meant to give the administration great power of action and to ensure that it should itself be judge of all claims to which its acts gave rise, has finally, in the natural development of things, worked out results diametrically opposed to the original design. We have here one of the most striking examples of the spontaneous formation of law. In the law schools it is still customary to cite, as the classical example of this process, the creation of the prætorian law at Rome. Not less representative is the development of the French theory and practice as regards acts in excess of power, misapplication of power and administrative liability. The part played by the French Council of State and by French jurists versed in public law may assuredly be compared, and not unfavorably, with that of the Roman prætor and *iurisprudentes*.

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[Translated by Munroe Smith.]

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THE RUSSIAN DUMA.

ON October 17, 1905, Japan granted a constitution to the Russian people; on June 3, 1907, the czar recalled the constitution.[1] It is the purpose of this paper to discuss these two events in Russian history with especial reference to the *coup d' êtat* which at the later date deprived Russia of the hard-won fruits of many years' endeavor.

That the defeat of the Russian army by the Japanese discredited the government with the people is hardly a fair statement of the case; the government had been discredited before, and the military catastrophe came as a surprise much more to the western world than to Russia herself. Nevertheless the draft on life and treasure caused by a war in whose objects the nation took not the slightest interest deepened the popular discontent; and the corruption, incompetence, and shortsightedness revealed by the bureaucracy in the struggle brought home to the masses the fact that the government was not even to be feared. Finally, the absence of the troops in the East, with but one pair of badly laid rails connecting the army with European Russia, seemed to put the government practically at the mercy of the people. And the people struck. The strike that took place in Russia in October, 1905, will always remain one of the riddles of history. What was never accomplished by organized labor in countries which have the right of free speech and assembly was achieved by the bureaucracy-ridden, unorganized and gagged Russian nation. Russia struck, and her trains ceased to run; her telephone and telegraph wires remained idle; her nights were not lighted by gas or electricity; her water works ran dry; her newspapers ceased to appear; her courts of law were deserted; her shops were closed; and her people remained at home waiting to see the effect of this tremendous demonstration.

On the 17th of October the government yielded; on that day

[1] Both dates relate to the Julian calendar, which is thirteen days behind the Gregorian.

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a manifesto was promulgated which in addition to guaranteeing to the people all the rights of civil liberty, called together a representative assembly, the First Duma, with broad legislative rights and privileges, and based on a franchise, which, although far from universal, included a large proportion of the population and gave all the elements in the Empire a voice in the management of its affairs.

The jubilations which followed this popular victory and the bureaucratic attempts (often successful) to divert the excitement of the nation into channels of anti-Semitic and anti-revolutionary excesses are fresh in mind. It is outside the province of this paper to describe these events; nor is there space to present in detail the system of elections based on the October manifesto. The general nature of the system will appear from the composition of the First Duma, and some of the features of the law will be mentioned in contrasting it with that of June, 1907.

A word about the place of the Duma in the system of government may here be pertinent. The Duma is the lower house of the legislature, the upper house being the Council of State, which is largely appointive. Concurrence of both houses, as well as approval by the czar, is necessary for the enactment of a law. The czar has the power of absolute veto. The Duma has the power to deal with all legislative matters, except those concerning the property and the expenditures of the court, the control of the army and the navy, and the treatment of Finland; on these matters the czar retains the sole right of action. The term bureaucracy is here used to describe the cabinet which is appointive and responsible only to the czar, and the whole elaborate machinery of central and local administration which radiates from the cabinet officers as heads of departments.

Of the members of the First Duma, more than three-fourths belonged to the dominant Greek Church, only 14 per cent being Roman Catholic, 3.3 per cent each Protestant and Mohammedan, and 2.7 per cent Jewish. This composition is significant in view of the fact that the First Duma was often called by the reactionary press the "Jewish Duma" with the object of injuring its prestige with the Russian people. The composition of the

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Duma by social classes is also of interest. Of the 448 members for whom information is available, 216, or 48.1 per cent, were peasants; 164, or 36.7 per cent, were nobles, including 10 princes, 4 counts, and 2 barons; and only 80 belonged to all the other classes combined. Most noteworthy is the large number of peasants. The leaders of the bureaucracy at that time were laboring under the misconception that the illiterate, priest-ridden peasantry was to be depended upon as a conservative, monarchial element of the population. This expectation was doomed to early disappointment. Through many years of daily struggle with hunger and frequent encounters with the tax collector and the rural police, the tillers of the soil had come to regard the government as responsible for their misery. The peasants in the First Duma disappointed the bureaucracy by their lack of respect for constituted authority.

The elections to the First Duma had not been tainted by government interference. The resulting assembly contained the flower of Russian intelligence; it counted among its members many a veteran fighter in the struggle for liberty, the acknowledged leader of this group being Muromtsev, who was elected president of the Duma by an almost unanimous vote. Space does not permit to give details of the activities of the First Duma. Indeed these activities were not given the opportunity of developing beyond the stage of argument and discussion, for the bureaucracy, frightened by the Duma's project of solving the agrarian problem by a plan which included the condemnation (at a fair price to be determined in each case by an impartial body) of the estates of large landowners, dissolved the Duma after it had lived only seventy-two days.[1] The stenographic accounts of the debates of the First Duma are a treasure-trove of oratory and of high-minded and fearless statesmanship. The First Duma was dissolved on July 9, 1906, and the elections to the Second were ordered for the autumn.

[1] It should be mentioned in this connection that compulsory alienation of large estates was not so radical a proposal in Russia as it would have been in America. Only fifty years ago a division of the land between the liberated serfs and the nobility was effected, and further transfers of land from the nobles to the peasants would have the character of a readjustment in the original arrangements rather than of a revolutionary innovation.

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The members of the First Duma, after its dissolution, found that the only safe way of meeting and discussing their predicament was to do so on foreign soil. Since Finland was close to the capital and at that time offered security from police molestation, a large part of the members of the disbanded Duma came together at Viborg and issued an appeal to the people urging them not to relinquish their constitutional rights and to refuse to pay taxes or to supply recruits to the army until the government budget was ratified by a new Duma. The only result of this appeal was the trial and condemnation to terms in prison of all its signers, and, even worse, their loss of the right of participation in future elections. Thus, at a stroke, Russia was deprived of the services of a large number of her ablest citizens; for among the signers of the manifesto were the president of the Duma and many of Russia's foremost lawyers, journalists and other public men. Of the entire membership of the First Duma hardly a score have remained in public life and are now members of the Fourth Duma.

A few words will suffice to relate the story of the Second Duma. It was elected according to the same law as was the First; but on the one hand, the government attempted to influence the normal run of the elections by exercising some of the methods of eliminating undesirable candidates, explained below in connection with the last elections, and on the other hand, the Social Democratic party, which had refused to participate in the elections to the First Duma on the ground that not enough representation was given to the working classes, changed its tactics and joined in the second electoral campaign. The resulting Duma was much more radical than the First, but contained also a more clearly defined element of reaction.[1] The Duma lived only one hundred and four days. It was then dissolved on the ground of a suspicion that some of its members were implicated in a revolutionary plot, and that the Duma refused to deliver these members to the authorities without first submitting the evidence to a parliamentary committee.[2]

[1] See table on page 414.

[2] It has come to light since that the plot was the result of activities of *agents provocateurs* employed by the police.

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The czar's manifesto of June 3, 1907, with the revised election law that accompanied it, was nothing short of a *coup d' état.* This manifesto enumerates the iniquities of the Duma from the point of view of the bureaucracy and then proceeds to express the opinion that the fiasco of the first two Dumas was due to the "imperfections of the election law which enabled men who were not truly representative of the needs and desires of the people to be elected to membership." The czar, proceeds the manifesto, will not abolish the institution of the Duma, he will only change the election law; such a change can not be intrusted to the false representatives assembled in the Duma and must be made by the supreme authority which alone could create the Duma and alone has the power of revising the election law.[1]

A thorough understanding of the electoral law of June 3, 1907, is not an easy matter, but it is eminently worth while for students of political science to examine this complicated system of disproportional representation which results in the absolute control of the supposedly popular branch of the legislature by one class, and that the smallest, of the population of the Empire.

The general plan of election by classes is not the result of an attempt to secure representation to each class of the population, but is a natural outcome of the entire legal system of the Empire, having its origin in the reforms of Peter the Great in the beginning of the seventeenth century. In discussing the election law of 1907 it should be remembered that the Third and Fourth Dumas were both elected under its provisions, and that the only difference between the two elections was in the fact that in the last one the government had learned more thoroughly the most effective ways of exercising the discretionary powers which the law vests in the local authorities. The Third Duma, it will be remembered, unlike its predecessors, completed its legal term of five years and the Fourth was elected in 1912. The First and Second Dumas were dissolved before having time to enact into

[1] The Act of June 3, 1907, was an open violation of the organic laws of the empire, since the only authority for legislation by the executive is contained in section 37 of these laws, and that action, while permitting the issuance of emergency laws by executive authority when the Duma is not in session, expressly prohibits any change in the election laws in that manner, and furthermore prescribes that laws promulgated at such times must be ratified by the Duma when it convenes.

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laws their comprehensive schemes of constructive reforms. Though the Third Duma sat for five years, it has little constructive legislation to its credit. The Stolypin Act which provides a way for breaking up the peasant commune was sanctioned by the Third Duma, but the Duma deserved no credit or discredit on that score: its whole career was that of a body whose main function, outside of debate, was to ratify the projects of the executive.

The so-called June election law was well designed to secure a Duma amenable to the wishes of the bureaucracy. The two principles underlying the structure of the law were: first, to reduce to a minimum the representation of all non-Russian and non-Greek-Orthodox elements of the population; and, secondly, to increase the representation of the large landowners and to minimize that of the urban dwellers, the peasantry, and the industrial workers. The first was accomplished by reducing the representation of Poland from 37 to 14 members, and that of the Caucasus from 29 to 10, and also by giving the Russian or the Greek Orthodox element, wherever it was in the minority, the right to elect its representatives separately from the rest of the population; and the second by adopting the system of elections described in the following paragraphs.

The accompanying chart shows the general plan of elections in European Russia and the qualifications prescribed for voters in each electoral group. It should be borne in mind that, while the chart illustrates the scheme of elections, it completely disregards the relative size of the electorate in each group. It will be seen that, in general, the population is divided into four groups: 1, Urban dwellers, 2, Landowners, 3, Peasants and 4, Working-men.

1. Five of the largest cities (St. Petersburg, Moscow, Kiev, Odessa and Riga) elect representatives directly to the Duma. In the old law there were twenty-six such cities. The electorate in these five cities, as well as in the others, is divided into two groups, one consisting of large real estate owners or owners of large industrial enterprises, and the other consisting of smaller real estate owners, owners of smaller enterprises, taxed artisans, payers of the tax on rent, lessees of separate apartments, and

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salaried or pensioned employees of the government or the railroads, excluding the lower grades of employment and the common laborers. From these five large cities each of the two groups elects eight members of the Duma; that is, the second and numerically vastly more important group of voters is given a representation merely equal to that of the first group which consists of comparatively few individuals. In Moscow, for instance, the voters in the first group for the Third Duma numbered 6674, and those in the second group, 39,755, that is, 14.4 and 85.6 per cent respectively of the total of 46,329 voters. And yet each of these two groups elected two of the four representatives from Moscow. This division of the city electorate is an innovation introduced in the 1907 law.

All the members of the Duma, except the sixteen from the five large cities, are elected by fifty-three district electoral colleges, and thus are only indirectly the choice of the voters. The city element in these electoral colleges consists of two groups similar to those from the five great cities, its combined strength being 1326 or about one-fourth of all the electors in the colleges. The first group of city voters elects 736 electors and the second group elects 590. Each of the fifty-three district electoral colleges is obliged to elect to membership in the Duma at least one of the city electors. But only one-half of the colleges are obliged to elect one from each of the two groups of voters; so that in half the districts the electors from the less well-to-do city voters are not guaranteed any representation in the Duma, the land-holding majority of the colleges being presumably in sympathy with the wealthier classes of the urban population.

2. Somewhat more than one-half of the members of the district colleges are elected by landowners other than peasants. In the law of 1905 this proportion was thirty-four per cent. The landowners in each district elect their electors at meetings in which large land and other real estate owners and holders of mining concessions participate, together with delegates from county assemblies of small landowners for whom a triple system of electors is thus established. The county assemblies consist of small landowners and of clergymen of churches which own

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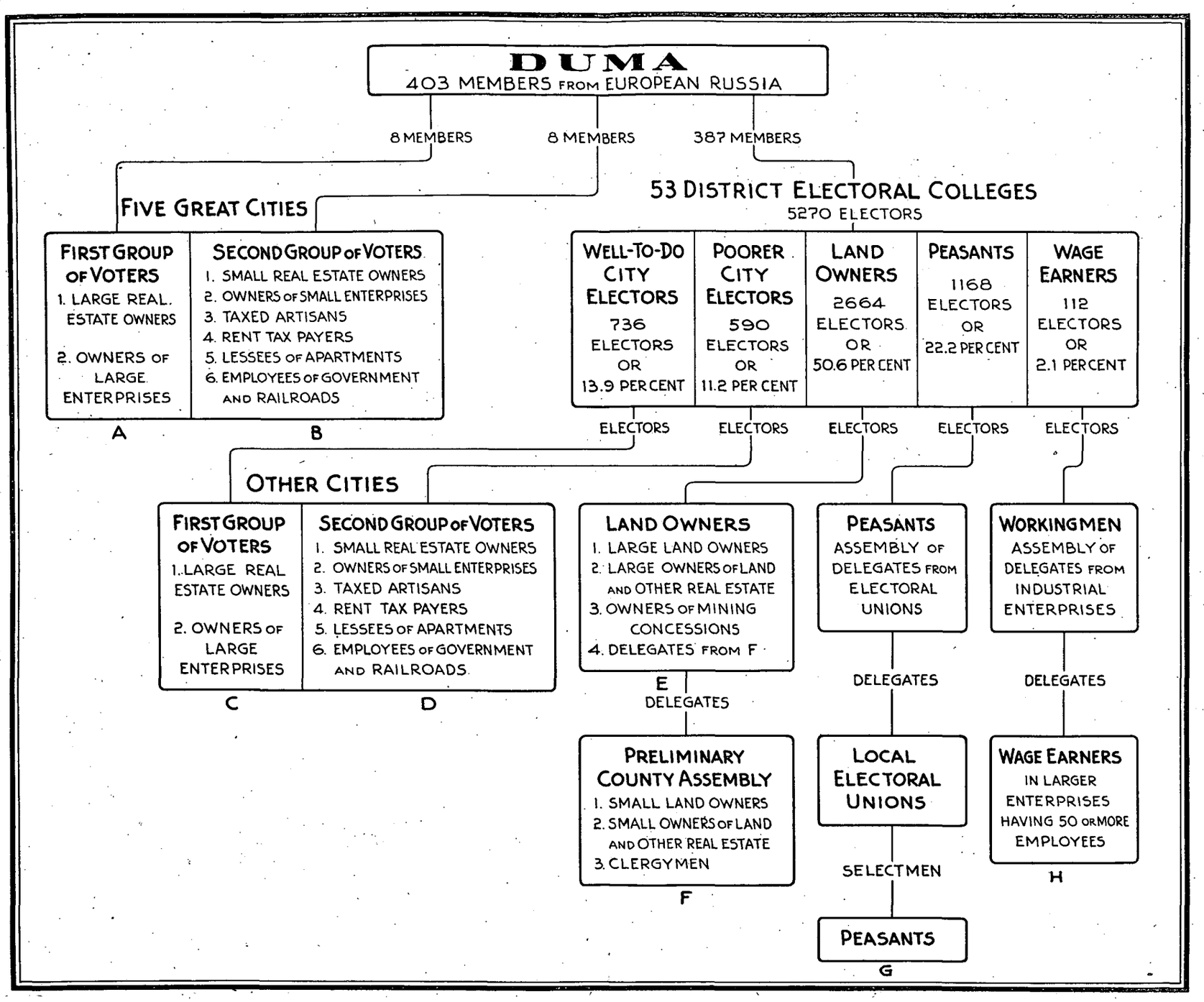

QUALIFICATIONS OF VOTERS IN THE DIFFERENT GROUPS

Males 25 years of age or over.

A—1. Owners of real estate valued at no less than $1500 in Moscow and St. Petersburg and at no less than $750 in the other three cities.
2. Owners of enterprises taxed as such at no less than $250 in Moscow and St. Petersburg and at no less than $25 in the other three cities.

B—1. Owners of real estate not qualifying under A 1.
2. Owners of enterprises not qualifying under A 2.
3. Payers of artisans' tax.
4. Payers of rent tax.
5. Lessees of apartments—occupying a separate apartment.
6. Employees of central or local government or of railroads, or pensioners, excluding lower grades and laborers.

C—1. Owners of real estate valued at $500 or more in cities of 20,000 or more inhabitants, and at $150 or more in smaller cities.
2. Owners of enterprises taxed as such at no less that $25 a year.

D—1. Owners of real estate not qualifying under C 1.
2. Owners of enterprises not qualifying Under C 2.
3. Taxed artisans.
4. Payers of rent tax.
5. Persons occupying a separate apartment.
6. Employees of central or local government or of railroads, or pensioners, excluding lower grades and laborers.

E—1. Owners of a minimum of from 270 acres to 1620 acres of land, varying by counties.
2. Owners of land and other real estate valued at no less than $7500.
3. Owners of large mining concessions.
4. Delegates from F.

F—1 and 2.
Owners of real estate and land not sufficient to qualify under E 1 or 2.
3. Clergymen of churches or other houses of worship, if such churches own land.

G— All duly registered peasants who have lived in the district for no less than one year.

H— All manufacturing and industrial establishments having no less than 50 male employees. Number of delegates is at the ratio of 1 to every full 1000 employees (1 for enterprises with from 50 to 1999 employees).

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land. The system works in the following way: Every landowner who possesses the minimum amount of land fixed for his county has the right to attend the landowners' district assembly, while those landowners who individually do not have enough land, meet in the county and elect delegates to the district assembly. The number of such delegates depends on the aggregate amount of land owned by those present at the county assembly, one delegate being authorized for each specified amount of land, the amount being fixed for each county and varying from 270 to 1620 acres. So that, for example, in a county where the minimum is 1000 acres, and in which there are 20 persons owning at least that amount, and 100 others owning less but having in the aggregate 5000 acres, the delegation to the district electoral college would consist of the 20 large landowners and of 5 men elected by the small landowners. This division between the large and small landowners is also an innovation in the present law. The large owners are given control over the 2664 delegates from the landed interests; and these 2664 form a majority of the total district electoral colleges in 32 of the districts, and nearly a majority in the other 21. Needless to say, each electoral college is obliged to elect at least one landowner for membership in the Duma.[1]

3. The peasants elect 1168, or about 22 per cent of the members of electoral colleges. In the 1905 law the peasants elected 42.7 per cent of the electors. The peasants are the class of population who had been serfs until 1861. Most of them own their land jointly with other members of their village community. Each household, however, has an allotment of land which it controls, although the title to it remains vested in the commune. The peasants have a four-jointed electoral system, beginning with the local peasants' community meeting, and going through three other stages before reaching the Duma, as shown on the chart. The male peasants, at least twenty-five years of age, meet in each village and select a delegation to the local electoral union where several other villages are also represented;

[1] A provision tending to increase still further the proportion of voters who are landholders is that women (or other disfranchised persons) who have real estate that would have been sufficient to entitle them to a vote may have a male relative vote for them, while no such right exists for a franchise based on anything else than real estate.

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each of these unions elects two delegates to a county assembly of peasants. These assemblies elect in the aggregate 1168 electors who are members of the district electoral colleges. Since there are about ninety millions of peasants in Russia, each peasant member of a district college represents over 75,000 of his fellow peasants, and each of the eighty-three peasant members of the Fourth Duma has a constituency of over one million of rural population. It is obvious, however, that the peasants would have no representation in the Duma at all (because their electors in the colleges would be outvoted by the landed gentry) were it not for the provision that at least one peasant member must be elected from each district. Thus the peasants in each district in practice submit a list of eligibles from which the landlords select one member of the Duma.

4. The small representation of the working-man is apparent from the chart. The delegates from that group number 112, only a trifle over two per cent of the entire membership of the electoral colleges. Even the election of this handful is in the first place by establishments and not by individuals, and only those having fifty or more male employees participate, each establishment (up to those having 2000 or more employees) sending one delegate to the working-men's assembly. It is true that a working-man employed in a shop with less than fifty employees may vote as an individual if he can qualify as a lessee of a separate apartment or as an owner of real estate; but that this right can be mentioned only in irony is clear to any one familiar with the economic status of the Russian working-man. Moved, however, by what M. Jaurès has aptly called Russia's *Coquetterie occidentale*, or flirting with the West, the bureaucracy has not permitted the 112 delegates of labor to be completely submerged in the district colleges; the law provides that in six of the districts one labor member must be elected to the Duma. Thus the working-men in six districts are given the privilege of submitting to the colleges a list of names from which the landowners select six members of the Duma.[1]

[1] It should be remembered that these six working-men representatives cannot be fairly compared with the labor members of the American House of Representatives,

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To recapitulate: eight members of the Duma are elected directly by the well-to-do voters of five great cities; eight others by the less well-off voters of the same cities, while 387 members are elected by 53 district electoral colleges. These colleges consist of 5270 electors, 2664 of whom represent the landowners, 1168 the peasants, 736 the well-to-do city dwellers, 590 the less prosperous city dwellers, and 112 represent workingmen in large establishments. Each of the fifty-three district colleges must elect from its membership at least one member of the Duma representing the landowners, one representing the city population, and one representing the peasants. In half of the colleges the law requires also the election of one member from the poorer city dwellers, and in each of six colleges one working-man must be elected. The high property qualifications required in cities result in the disfranchisement of a large part of the urban population, including nearly all the wage-earners. In rural districts the suffrage is granted to a much greater part of the population, but, by a process of triple and quadruple sifting, the influence of the peasants and the small landowners is practically nullified. It is not an overstatement to assert that the election of the vast majority of the Duma members is, by the law of 1907, entrusted to the nobility and the representatives of capital.[1]

Such is the skeleton of the election law. But the bureaucracy, not content with the rigid provisions of this system, goes

but only with the total number of representatives who are responsible to a labor constituency.

[1] A curious incident occurring in the Duma was reported in the Russian papers of October 31, 1913. It illustrates the attitude of the liberals and of the conservatives in the Duma towards the Law of June 3. A number of members had signed a resolution calling for an investigation of the government's actions in a certain matter of public interest. The president of the Duma had refused to publish the text of the resolution on the ground that it was couched in unparliamentary language, although such men as Paul Milyoukov had signed it and had stated that the wording was perfectly respectful. In discussing this ruling one member after another alluded to the Law of June 3, 1910, and every time the orator was stopped by the presiding officer and compelled to resume his seat. Finally, one member in descending from the rostrum said: "Mr. President, I have not referred to the June law in a disparaging manner, I have merely mentioned it, and I have been rebuked; it is evident that the chair considers this law so objectionable that its very mention constitutes a breach of parliamentary etiquette."

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further and leaves certain very important discretionary powers in the hands of the executive authorities who are thus enabled to facilitate or impede the selection of any given candidate. Experience has demonstrated to the government that no class of the population can be thoroughly depended upon, and in addition to a class selection it now attempts a careful scrutiny of individual candidates. Most important of the executive powers is that which in American political parlance would be called gerrymandering after the election. What this extraordinary provision means is this: the authorities have the right to split county assemblies into two or more separate bodies after the delegates to these assemblies have been elected, and the division may be made either geographically or in accordance with nationality or religion, or with reference to amount of land owned. The practical utility of this provision is obvious. Supposing 21 members of an assembly are to elect 7 delegates, and of the 21, 14 are liberal, and 7 conservative; the assembly if allowed to act as a unit would elect 7 liberals, but if the assembly were to be divided into one group of 7 members holding together 1800 acres of land, and one of 14 members having only 300, the former would elect 6 conservative delegates, and the latter 1 liberal. This is an imaginary illustration, but it comes close to actual occurrences. In the last election the favorite element for such manipulation was the clergy who were not permitted, under penalty of expulsion, to vote contrary to the wishes of the bureaucracy. The Russian Church, it may be well to mention, has the czar as its supreme head and is ruled by the Holy Synod, the procuror of which is a member of the cabinet and generally a layman. The clergymen were given absolute instructions at the last election to support and vote for conservative candidates. The clergy was used as a reserve element which was poured into assemblies when thereby a conservative majority could be secured, and kept out when the majority of the lay members were known to be conservatives, or when the majority controlled by the liberals was too great to be overcome by the clergy, in both of which cases the clergy was allowed to elect its own conservative delegate. This resulted not so much in a large number of clergymen in the Duma, although

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the number is considerable (49) as in the presence in that body of a large number of laymen whose election was made possible by the clergy, that is by its master, the bureaucracy.

In addition to this gerrymandering device, the government has many ways of eliminating undesirable voters or candidates. Among the peasants, the rural police often bar from local assemblies undesirable voters whom they know to be too meek to appeal. In the case of urban dwellers, a favorite device is to start a political prosecution against an undesirable candidate, which bars him from participation in the elections and which may or may not be dropped when they are over. An interpretation of the election law with reference to the person involved is also widely practiced. Thus, for example, a moderately liberal candidate for the Fourth Duma was disfranchised at his home on the ground that he was not a resident, the fact being that he had been a member of all the first three Dumas and naturally had spent a considerable part of his time in St. Petersburg. This decision was doubtless reversed by the Senate, but such reversal could come only after the elections had taken place. Examples of this sort are frequent.

It may be worth while in this connection to present a comparative tabulation of the religious, social, and educational composition of the First and of the Fourth Duma. This is done in the following table. The totals for the dumas are not entirely complete, but include all the members for whom the data are available. There is no reason to doubt the substantial accuracy of the relative figures.

COMPOSITION OF THE FIRST AND OF THE FOURTH RUSSIAN DUMA

Religion

DENOMINATION	FIRST DUMA		FOURTH DUMA	
	NUMBER	PERCENT	NUMBER	PERCENT
Total	448	100.0	439	100.0
Greek Catholic	343	76.4	387	88.1
Roman Catholic	63	14.1	20	4.6
Protestant	15	3.3	14	3.2
Mohammedan	14	3.3	7	1.6
Jewish	11	2.7	3	0.7
Other	2	0.2	8	1.8

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Social Class

CASTE	FIRST DUMA NUMBER	FIRST DUMA PERCENT	FOURTH DUMA NUMBER	FOURTH DUMA PERCENT
Total	448	100.0	439	100.0
Nobles	164	36.7	233	53.1
Honorary citizens	9	2.0	22	5.0
Clergy	14	3 3	49	11.2
Merchants	11	2.2	11	2.5
Ordinary city dwellers	20	4.4	32	7.3
Peasants	216	48.1	92	20.9
Not reported	14	3.3	—	—

Educational Status

GRADE	FIRST DUMA NUMBER	FIRST DUMA PERCENT	FOURTH DUMA NUMBER	FOURTH DUMA PERCENT
Total	448	100.0	439	100.0
Higher	189	42.1	222	50.6
Secondary	62	13.8	113	25.7
Elementary	111	24.7	74	16.8
Private	84	18.9	30	6.8
Illiterate	2	0.4	—	—

In the First Duma somewhat more than three-fourths of the members were Greek Orthodox; in the Fourth, more than seven-eighths belonged to the dominant church, all the other important churches having lost in relative importance.

In regard to social classes, the noteworthy changes are in the increased importance of the nobility and of the clergy, and in the great decline of the peasant membership, which was 216 in the First Duma as compared with 92 in the Fourth. In the First Duma the peasants formed nearly one-half of the membership, in the Fourth about one-fifth.

In educational status the Fourth Duma is ahead of the First. Little wonder, since the membership of the Fourth is made up so largely from the upper classes of society.

Another table presents the political composition of each of the four Dumas. The constantly shifting names of Russian parties have been dispensed with, since their names would mean but little to American readers. The parties have been classified as being reactionary, conservative, liberal, or radical; and to this has been added a group which consists of members representing some racial element, like the Poles or the White Russians, who cannot be classified under any other head; there is

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shown also a non-partisan contingent which was very considerable in the First Duma, because at that time party organizations were not complete or comprehensive.[1]

In general terms, it may be stated that the reactionary parties are those which believe in absolute autocracy and would favor the abolition of all representative institutions; the conservatives believe in a Duma, provided the nobility has a controlling voice in its affairs; the liberals are in favor of a representative Duma with full legislative powers, while the radicals for the most part favor a socialistic state.

POLITICAL COMPOSITION OF THE FOUR DUMAS

	FIRST DUMA		SECOND DUMA		THIRD DUMA		FOURTH DUMA	
PARTY	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT	NUMBER	PERCENT
Total	448	100.0	505	100.0	440	100.0	439	100.0
Reactionary	—	—	22	4.4	140	31.8	185	42.1
Conservative	20	4.5	32	6.3	135	30.7	99	22.6
Liberal	153	34.1	92	18.2	91	20.7	105	23.9
Radical	107	23.9	214	42.4	29	6.6	24	5.5
Special racial	63	14.1	95	18.8	27	6.1	16	3.6
Non-partisan	105	23.4	50	9.9	18	4.1	10	2.3

The table shows that the membership of the First Duma was largely liberal, radical, or non-partisan; that in the Second Duma both extremes, the reactionary and the radical, were strengthened, but that, on the whole, that Duma was much more radical than the First; in the Third and in the Fourth Dumas the reactionaries and the conservatives combined have had practically a two-thirds majority. It is noteworthy that the Fourth Duma has a larger reactionary contingent than any of its predecessors, but it is perhaps much more surprising, in view of all the preceding discussion, that the liberals have a larger representation in the Fourth than in the Third Duma. This last fact was indeed a surprise to the whole country, which was led to expect an almost solidly reactionary Duma.

When the Fourth Duma convened it elected to its presidency

[1] For the benefit of the readers who are not familiar with Russian partisan terminology, it may be stated that in the Fourth Duma the parties included under the four main heads were as follows: *Reactionary:* Rights (64); Nationalists (88) and Center (33); *Conservative:* Octoberists (99); *Liberal:* Progressives (47) and Constitutional Democrats (58); *Radical:* Labor Party (10) and Social Democrats (14).

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Mr. Rodzianko, a moderate conservative (Octoberist), who in his opening address made the following statement:

> I always have been and now am an ardent partisan of representative government based on the constitutional principles promulgated in the great manifesto of October 17, 1905; the first and most urgent duty of Russia's representative assembly is to strengthen the application of the principles of that manifesto to Russian life.

In view of the fact that the manifesto of October, 1905, was practically recalled by that of June, 1907, this announcement of the conservative president of the Duma is most significant. It shows that there is no class of the population on which the government can rely for unquestioning obedience and that even a careful weeding out of all candidates known to belong to the opposition is not sufficient to prevent the election of some men who remember that Russia has had a constitution and who refuse to accept its arbitrary revocation as final or as binding on the Duma. It is in this respect that the institution of the Duma has rendered its greatest service to the country; it has furnished a forum where opinions can be voiced with impunity and has made it possible for the members to educate the people to a realization that their interests will be better taken care of under a constitutional than under an autocratic régime.

In conclusion, may the question not be raised whether a government which, although armed with a convenient election law, and thoroughly proficient in the use of executive prerogatives, has not succeeded in collecting a solidly submissive legislative body, can be expected indefinitely to continue at the helm? If the word "constitution" cannot be kept out of the Duma, nor even out of the opening address of its conservative majority's chosen president and spokesman, even though the mention of that word has been considered sufficient cause for the disbanding of political meetings by the police, the time when the nation will demand and obtain a real constitution cannot be far removed.

E. A. GOLDENWEISER.

WASHINGTON, D. C.

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PRESIDENTIAL TENURE AND REËLIGIBILITY

THE Senate of the United States passed the Works resolution on the first day of February, 1913. This provided as follows:

> The term of the office of the President shall be six years; and no person who has held the office by election, or discharged its powers or duties, or acted as President under the Constitution and laws made in pursuance thereof shall be eligible to hold again the office by election.

Had this resolution received a two-thirds vote in the House of Representatives during the Congress then in session and then been ratified by the legislatures of three-fourths of the states, it would have become a part of our organic law superseding that provision of section one, article two, of the Constitution which fixes the tenure at four years without limiting the number of terms that a president may serve.

The questions involved in this proposed amendment are as old as the Constitution itself. They were subject of debate in the convention that framed the Constitution. This convention convened May 25, 1787, and continued its deliberations until the seventeenth of the following September. There was grave discussion as to the method of choosing the executive, the length of his term of office and his eligibility or ineligibility for more than one term. James Wilson of Pennsylvania, Roger Sherman of Connecticut and Gunning Bedford of Delaware desired a term of three years; but Alexander Hamilton of New York, Dr. James McClurg of Virginia, Gouverneur Morris of Pennsylvania and Jacob Broom of Delaware favored an executive who should serve during good behavior.

On June 2, just seven days after an organization had been effected, the convention agreed that the executive should be chosen by the National Legislature (Congress) for a term of seven years, and that he should not be eligible for more than one term. While this decision was reaffirmed on July 26, there was nevertheless much dissatisfaction with it. No less than six

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unsuccessful attempts were made to change it. It remained the decision of the convention until September 6. On that date, just eleven days before adjournment, the Committee of Eleven, appointed to decide on the tenure and the powers of the president, recommended the present system, which was adopted by the convention. The four-year term with silence as to reëligibility became a provision of the Constitution as a compromise to effect a reconciliation of extreme views.

Able and patriotic men opposed reëligibility both in the convention and out of it when the Constitution was before the people for ratification in the various states. George Mason, Hugh Williamson, Charles Pinckney, Pierce Butler, John Rutledge, Luther Martin and Elbridge Gerry spoke against it in the convention. Mason thought a second election should be prohibited absolutely. Hugh Williamson believed that eventually we would have a king and that the best way to postpone this event was to provide ineligibility for a second term. Charles Pinckney declared that public liberty would be endangered if the Constitution permitted eligibility for more than one term.

Outside of the convention, Thomas Jefferson, James Monroe, Patrick Henry, Edmund Randolph and many other men prominent in public affairs opposed eligibility for reëlection. Jefferson in his *Autobiography* says: "My wish, therefore, was that the President should be elected for seven years, and be ineligible, afterwards." Jefferson was our representative to France from 1785 to 1789 and was therefore not a member of either the convention that framed the Constitution, or the Virginia ratifying convention. When he received information of the provisions of the proposed constitution he expressed himself in no uncertain terms as to reëligibility. He wrote John Adams from Paris, November 13, 1787, and said: "I wish that at the end of the four years, they had made him [the president] forever ineligible a second time." On the twentieth of the next month he wrote James Monroe and stated that he objected to the new Constitution because of the "abandonment, in every instance of the principle of rotation in office, and most particularly in the case of the President." Under date of February 7

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1787, he wrote Mr. Donald: "There is another strong feature in the new Constitution, which I strongly dislike. That is, the perpetual reëligibility of the President." In the Virginia ratifying convention, Monroe spoke against reëligibility. To him, nothing was so important as a periodic rotation in office. He believed that reëligibility made it possible for an able, ambitious man to hold office for life. Governor Edmund Randolph urged the adoption of an amendment before ratification that would make the president "ineligible after a number of years."

Virginia took the advice of Randolph and proposed an amendment making the president ineligible for more than eight years in any term of sixteen. Conventions in two other states, New York and North Carolina, also proposed amendments. That of New York provided that no president should be elected for a third term; that of North Carolina was like that of Virginia except that fifteen years was substituted for sixteen. The Constitution went into effect in 1789. In the first Congress, August 18 of that year, Mr. Tucker of South Carolina introduced into the House of Representatives a resolution that prohibited any president from serving more than eight years in any twelve. This resolution failed in the House, as did the one proposed in the Senate, September 8 of the same year, which was similar to that proposed by the Virginia convention. Fourteen years later (1803) a committee of the Senate reported a resolution that provided that a person who had served twice successively as president should be ineligible for another term until four years had elapsed, and that then he would be eligible for four years, but no longer. This resolution came to a vote, but was rejected by a vote of four to twenty-five.

No other resolution restricting eligibility until after a certain period of years was introduced until 1826. Between that date and 1850, seven resolutions were presented to prevent any president from succeeding himself. Four of these were introduced by Joseph Rogers Underwood who was a member of the House from 1835 to 1843, and of the Senate from 1847 to 1853. Another was introduced by Erastus Root of New York, March 2, 1832. Since the Civil War this amendment has been proposed a number of times in connection with a proposition to make the term one of six years.

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A large number of amendments have been proposed to prohibit the same person from serving more than two terms. The one proposed by the New York ratifying convention, already mentioned, was of this type. It was not advocated again until 1823. Then on January 30, Judge Mahlon Dickerson, senator from New Jersey from December 1, 1817, till March 2, 1833, offered an amendment for the election of president which limited his eligibility to two terms. The next year, January 8, Senator Thomas Hart Benton from Missouri introduced from the Senate Committee on Elections a resolution containing a similar clause. During this session, too, a resolution from the same committee making the same recommendation as to tenure passed the Senate by a vote of thirty-six to three; but in the House of Representatives it was never reported from the committee. It was a matter, however, that was near the heart of Senator Dickerson, who, despite his failure in 1823, made two more attempts to amend the Constitution so that no president could serve more than two terms. The first of these two resolutions was introduced into the Senate December 19, 1825. This passed that body but failed of a two-thirds vote in the House. The second attempt was made in 1830, when on December 29, Senator Dickerson introduced another resolution of the same import; but it never came to vote.

It was not until there was talk of a third term for General Grant in 1875 that there was a revival of this proposition. By this time it was generally recognized that eligibility for two terms only was a part of our unwritten constitution. Washington, Jefferson, Madison, Monroe and Jackson had served two terms each. Mr. Lincoln had been reëlected but was assassinated at the beginning of his second term. At the close of Washington's second term he was urged to seek a third election. His reply was his "Farewell Address" and in this he declined. Towards the close of Jefferson's second term, he was urged by many citizens, as Washington had been, to become a candidate for a third term. Besides this, the legislatures of Georgia, North Carolina, Maryland, New Jersey, Pennsylvania and Vermont, and the House of Delegates of Virginia and the Senate of New York requested him to become a candi-

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date for a third election. Like Washington, he declined, and gave reasons for his decision in his "Reply to Vermont Address."

As early as 1872, in the Grant-Greeley campaign, the New York Herald "had raised the cry against Caesarism," and in 1875 when the friends of Grant began to cast about for means to secure him a third nomination, there was immediately a loud protest from leaders and members of the Republican party. It was highly displeasing to a large part of our voting citizenship without regard to party that the rule established by Washington, and respected by Jefferson, Madison, Monroe and Jackson, should now be broken. It was clear that the President was not averse to a third term. The Pennsylvania state Republican convention passed a resolution declaring unalterable "opposition to the election to the presidency of any person for a third term." This drew from President Grant a letter addressed to General White, the president of the convention, in which he said: "Now for the third term; I do not want it any more than I did the first." He called attention to the fact that the Constitution does not prohibit the people from electing the same person more than twice, and pointed out that at some time in the future it might prove unfortunate if a change was made at the end of eight years. He added that he "would not accept a nomination if it were tendered, unless it should come under such circumstances as to make it an imperative duty, circumstances not likely to arise." It was generally the opinion that this letter meant that General Grant's friends were "at liberty to make it appear the imperative duty of the Republicans to nominate him again and of the President to accept the nomination." Except among officials of the national government, the idea made little headway. With the greater part of the Republican party, and with all the Democrats, there was, however, great fear that the organization of the official class might through political manipulation give the President a third nomination and election.

Leading Republican and Democratic members of Congress desired to give a death blow to these third-term efforts. Accordingly on December 15, 1875, William McKendee Springer, a

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Democratic member of the House of Representatives from Springfield, Illinois, introduced the following resolution:

> That in the opinion of this House the precedent established by Washington and other presidents of the United States, in retiring from the presidential office after their second term, has become by universal concurrence a part of our republican system of government, and that any departure from this time-honored custom would be unwise, unpatriotic, and fraught with peril to our free institutions.

The resolution passed the House by the decisive vote of 235 to 18. Every Democrat and seventy out of eighty-eight Republicans present voted for it. A month later, January 18, 1876, Mr. New of Indiana introduced a resolution to incorporate this unwritten amendment into the Constitution. His efforts failed because of the belief of a majority of the House that the tenure should be limited to one term.

The passage of the Springer resolution effectually ended, for the time being, all hopes and plans of the friends of General Grant to give him a third term. On his retirement from the presidency, March 4, 1877, he made a trip around the world, returning September 20, 1879. Early in 1880 he visited some of the southern states, and also Cuba and Mexico. He then went to Galena, Illinois, his old home, to reside. Almost immediately a popular movement began, favoring his nomination that year by the Republicans for the presidency. The convention met at Chicago in June and his name was presented as a candidate. There were thirty-six ballots, and on the last, General James A. Garfield was chosen. Through all the ballots, General Grant's friends, marshaled by Roscoe Conkling and General John A. Logan, remained true to his candidacy. His vote varied from 302 to 313. As a result of this attempt to give General Grant a third election, two resolutions prohibitive of a third term were proposed in this year as amendments to the Constitution. The first was introduced in the House of Representatives by Mr. Geddes of Ohio, on April 12, during the contest to secure delegates to the convention. This was read twice and then referred to the Committee on Judiciary. This second resolution was also introduced in the House of

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Representatives, and was offered, December 20, by Mr. Frost of Missouri. Like the Geddes resolution, this was read twice and referred to the Committee on Judiciary, to be heard from no more. In the pre-convention campaign it had been argued that as four years had elapsed between Grant's two terms and the one he sought beginning March 4, 1881, his election would "not be a breach of the unwritten constitution." Some of the members of the House of Representatives who vigorously opposed a third term in 1876 accepted this view and supported General Grant.

The purpose of all the resolutions mentioned—the prevention of the use of the great powers of the presidency for the re-election of the one in office—could without doubt be more easily and effectively accomplished by an amendment limiting eligibility to one term with or without change of tenure. The Works resolution previously mentioned is of this type. Since 1879 many such resolutions have been proposed. Leading statesmen have favored such an amendment; presidents have recommended it; and three political parties have urged it as a plank in their platforms. As to tenure, more than a hundred resolutions have been proposed to change it. Almost half of them were for a term of six years; one proposed in 1808 by James Hillhouse, senator from Connecticut from 1796 to 1810, was for a term of one year. Senator Hillhouse was a staunch Federalist and during the Jeffersonian régime he discovered what he thought were dangerous tendencies in our federal system. This proposed amendment was one which with others he believed would correct the evils. Another amendment fixed the term at five years; and a third introduced in the House of Representatives in 1888 extended it to eight years.

Many, if not most, of the resolutions limiting the president to one term only made no change in the tenure. A proposition of different type from any mentioned emanated from the Hartford Convention and was evidently prompted by New England's jealousy of Virginia. The convention met December 15, 1814, and among its resolutions was one that declared that the president should "not be reëligible and should not be taken from the same state two terms in succession." At this time four dif-

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ferent men had held the presidential office. Three of them—Washington, Jefferson and Madison—had come from Virginia; and only one—John Adams—had been chosen from New England. This resolution was endorsed by the Connecticut Legislature, and one of her senators, Samuel W. Dana, offered it in Congress in 1815.

We next hear of the proposal for a single term only, in 1824; and between that date and 1846, either as a direct amendment or in connection with other proposed amendments to change the method of electing the president, it was proposed in Congress nearly fifty times. In this period there was a decided conviction on the part of many leading men, and in many localities, that such an amendment ought to be secured. In 1828, Chief Justice Marshall wrote that he was "disposed to try the effect of confining the Chief Magistrate to a single term." Jackson's failure of election by the electoral college, and also by the House of Representatives, in 1824, led him after he became president in 1829 to favor a single term. In his first annual message to Congress he recommended "an amendment of the Constitution as may remove all intermediate agency in the election of the President and Vice-President," and in this connection said "it would seem advisable to limit the service of the Chief Magistrate to a single term of either four or six years." In his annual message he wrote: "I cannot too earnestly invite your attention to the propriety of promoting such an amendment of the Constitution as will render him [the president] ineligible after one term of service." In each of his other six annual messages he recommended it to the consideration of Congress.

Ineligibility after one term was the watchword of the National Whig convention at Harrisburg in 1839, whose candidate for the presidency, General William Henry Harrison, in his campaign speeches expressed himself in favor of it. Henry Clay, too, endorsed it. In a speech at Taylorsville, Virginia, July 10, 1840, on "The Presidential Election," he said there should be a provision to render a person ineligible to the office of president of the United States, after a service of one term. In giving his reasons for his position he stated:

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Much observation and deliberate reflection have satisfied me that too much of the time, the thoughts, and the exertions of the incumbent are occupied, during his first term, in securing his reëlection. The public business consequently suffers, and measures are proposed or executed with less regard to the general prosperity than to their influence upon the approaching election. If the limitation to one term existed, the President would be exclusively devoted to the discharge of his public duties; and he would endeavor to signalize his administration by the beneficence and wisdom of its measure.

On March 4 following, General Harrison in discussing this question in his inaugural address said: "Until an amendment of the Constitution can be effected, public opinion may secure the desired object. I give my aid to it by renewing the pledge heretofore given that under no circumstances will I consent to serve a second term."

At this time nine different state legislatures passed resolutions favoring an amendment against reëligibility. Indiana took the lead, passing her resolution in 1837; four years later, Connecticut, Delaware, Maine, Massachusetts, Rhode Island and Vermont followed her example. In the next year (1842), Kentucky, and Vermont for the second time, passed such resolutions. After 1846 we hear no proposal of this amendment for several years. That the agitation for it had not ceased is evidenced by an editorial against it that appeared in *Niles Register*, May 15, 1847. The editorial is entitled "The Presidency—National Conventions." Relative to limiting eligibility to a single term, it said:

Some propose the term in that case should be extended to six years. Although the proposition is sanctioned by great men and by great numbers of men, we are opposed to change in the Constitution in this particular. We would let well enough alone. As to abating the ardor of contests for executive power, instead of diminishing, such a change would greatly increase it. It would cure no one evil; it would originate evils that we know not of. The main objection to the change is that it would unnecessarily restrict a free and enlightened people from exercising one of their first privileges—that of selecting whom they please to administer the government. It is akin to denying them the right to choose at all. The very man that of all others the people

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might prefer—the man who had learned the duties of the office, who had performed them faithfully, who had the advantage of experience, an advantage of some value, even in the executive department, the man that the country might undoubtedly confide in, as they did in Washington, in Jefferson, in Madison—that man such a restriction would not allow the people to have the services of.

In 1861 Clement H. Vallandingham of Ohio, a member of the House of Representatives from May 25, 1858, till March 3, 1863, presented a scheme for the election of president in which he had incorporated a one-term provision. Three years later, April 6, 1864, Senator Lazarus W. Powell of Kentucky introduced the following: "The President and Vice-President shall hold their office for the term of four years. The person who has filled the office of President shall not be reëligible." In advocating this resolution, Mr. Powell said:

I believe that no man who has been in the presidential office for the last twenty years, who has sought a reëlection, but has used, to a greater or less extent, the power and the influence of the office for the purpose of securing his reëlection. A free nation must protect itself by the virtue and the force of its own laws, otherwise it will sooner or later perish. When we clothe a citizen of this Republic with the office of chief magistrate, he should not be tempted to use the power of that office for the purpose of securing a reëlection. Whenever he does so he prostitutes the high office he holds. The chief magistrate should devote his whole time to the duty of administering the laws of the country and to seeing that they are faithfully executed. He should not be diverted, by any hope of future position, from the single purpose of promoting the good of the country over which he presides.

At this time there was before the Senate a resolution to amend the Constitution so as to prohibit slavery in the United States. This prevented the Powell resolution from receiving the support that it otherwise would have had. Senator Lyman Trumbull of Illinois said: "I am inclined to think it would be an improvement of our present Constitution not to allow the executive to be reëlected. But we have now got before us one distinct proposition to so amend the Constitution as to prohibit slavery." Senator Trumbull was one of the first to propose an

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amendment to the Constitution for the prohibition of slavery. He felt that this question was paramount, and stated in his speech that if the Powell resolution were pressed to a vote he would be compelled to vote against it. The resolution was brought to a vote and failed largely because of the proposed amendment to prohibit slavery.

On December 7, 1864, Mr. Sloane of Wisconsin introduced a resolution in the House of Representatives instructing the Committee on Judiciary to inquire into the expediency of any amendment limiting the tenure to one term. This was agreed to by a vote of sixty to fifty-six. A motion that was made to reconsider this vote was tabled. About the same time, Representative James M. Ashley of Toledo, Ohio, made a motion that a select committee be appointed to consider all bills and resolutions that should be introduced relative to the manner of choosing the executive and his tenure. On February 20, 1865, Senator Benjamin F. Wade of Ohio asked and obtained unanimous consent to introduce a joint resolution which provided as follows: "The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and shall not again be eligible to that office during the term of his natural life." In offering the resolution Mr. Wade said that its introduction was due to no impulse of his, as he had been "an advocate of the principle in it for many years." He added:

> I have derived the strong impression which I entertain on the subject from a very careful observation of the workings of our government during the period I have been an observer of them. I believe it has been very rare that we have been able to elect a president of the United States who has not been tempted to use the vast power intrusted to him according to his own opinion to advance his reëlection.

In the next year three resolutions were introduced in the Senate limiting the tenure to one term. The first was proposed by Luke P. Poland of Vermont, and provided for a single term of six years. The second was by Mr. Davis of Kentucky, and the third by Aaron H. Cragin of New Hampshire. Neither of these two proposed any change in the length of the term.

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When Senator Poland introduced his resolution for a single term of six years, the Senate had under consideration a proposed amendment which provided that "no person elected President or Vice-President, who has once served as President, shall afterwards be eligible to either office." The purpose of this was the limitation of the tenure to two four-year terms. In the discussion which followed, Senator Fessenden of Maine declared that the words "who has once served as President" should be stricken out. Senator Williams of Oregon suggested the wording: "No person who has once served as President shall afterwards be eligible to either office." At this juncture, Senator Poland introduced the resolution referred to, which read as follows: "The President and Vice-President of the United States shall hereafter be chosen for the term of six years; and no person elected President or Vice-President, who has once served as President, shall afterwards be eligible to either office." Senator Johnson of Maryland expressed himself in favor of the Poland resolution and particularly that part of it which would extend the term to six years. Charles Sumner of Massachusetts said:

> I agree with the Senator from Maryland [Mr. Johnson], so far as I was able to follow his remarks. It seems to me it would be better, if the term of the President was six years rather than four. I regretted that the report of the Committee did not embody a change. I am therefore thankful to the Senator of Vermont, who by his motion gives us an opportunity to vote on that proposition.

Between this year, 1867, and January 1, 1874, Senator Sumner introduced three resolutions to effect this change in the Constitution. The first was offered in the Senate, April 8, 1868, and after two readings was referred to the Committee on Judiciary. The second was presented December 21, 1871. This also had two readings, and after consideration in Committee of the Whole was referred to the Committee on Judiciary. The third and last Sumner resolution was introduced December 1, 1873, and provided for one term of six years. This was referred to the Committee on Privileges and Elections. Between the dates of the last two resolutions, May 31, 1872, Senator

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Sumner delivered in the Senate his speech, "Republicanism *vs.* Grantism," in which he discussed the "one-term principle" and declared himself in favor of it when he said:

> Therefore, in opposing the prolonged power of the present incumbent [Grant], I begin by insisting, that, for the good of the country and without reference to any personal failure, no president should be a candidate for reëlection; and it is our duty now to set an example worthy of republican institutions. In the name of the one-term principle, once recognized by him, and which needs no other evidence of its necessity than his own presidency, I protest against his attempt to obtain another lease of power.

Previous to the last resolution offered by Senator Sumner, Representative Nathaniel P. Banks introduced into the House a resolution which provided for the direct election of the president for one term of six years. This was read twice and then referred to the Committee on Judiciary. Horace Greeley favored a term of six years without reëligibility. In an article in the *Galaxy* for October, 1871, entitled "The One-term Principle," he calls attention to the provision in the constitution of the Southern Confederacy (article ii, section 1) which says: "The Executive power shall be vested in a President of the Confederate States of America. He and the Vice-President shall hold their offices for the term of six years; but the President shall not be reëligible." After quoting this, Mr. Greeley asks, "How soon, if ever, a similar provision shall be engrafted on the federal Constitution, it were rash to predict." His argument in support of his position is not different from that of other great men who have opposed the reëlection of the one in office. He says:

> The practice of reëlecting a Chief Magistrate while in office is fraught with evil and peril . . . it detracts his attention from the proper cares and duties of his station, and impels him to consider not who are fittest and most worthy to fill the offices in his gift, but what choice will be most likely to improve his chances of renomination.

Since 1874 there have been many resolutions introduced into one or the other of the two houses limiting the tenure to one

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term. On at least two occasions such a resolution has been brought to a vote in the House of Representatives. The first was in 1875 on an amendment reported by the Committee on Judiciary fixing the term at six years and limiting the tenure to one term. This failed for lack of the necessary two-thirds vote. In the first session of the succeeding Congress the question was called up by a majority and a minority report of the Committee on Judiciary. There was agreement in the two reports in favor of ineligibility for more than one term, but they differed as to the length of the term. The majority report favored the present term, while the minority favored six years. The vote on this proposition to fix the term at six years with ineligibility for a second term was 145 yeas to 108 nays. In 1876 President Hayes in his inaugural address, in speaking of reform in our civil service, said: "In furtherance of the reform we seek, and in other important respects a change of great importance, I recommend an amendment to the Constitution prescribing a term of six years for the presidential office and forbidding a reëlection." Mr. Grover Cleveland in his letter of acceptance, August 18, 1884, declared:

> When an election to office shall be by the voters of one of their number to assume for a time a public trust instead of his dedication to the profession of politics; when the holders of the ballot quickened by a sense of duty shall avenge truth betrayed and pledges broken and when the suffrage shall be altogether free and uncorrupted, the full realization of a government by the people will be at hand. And of the means to this end, not one would, in my judgment, be more effective than an amendment to the Constitution disqualifying the President from reëlection.

Eight years later the People's party held its first national convention. It met at Omaha, July 2. One plank in the platform adopted reads as follows: "Resolved that we favor a constitutional provision limiting the office of President and Vice-President to one term, and providing for the election of Senators of the United States by a direct vote of the people."

Among the propositions to provide against eligibility for more than one term and to fix that term at six years, are three

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that made future provision for the outgoing president. One introduced by W. R. Morrison of Illinois, December 14, 1875, proposed that the retiring president should be a senator for life. Two others proposed to pension him. One of these, introduced by Mr. Berry of California, fixed the pension at six thousand dollars annually. This was introduced in the House of Representatives January 30, 1882. The other was introduced by Mr. Millard of New York, December 12, 1884, and fixed the pension at ten thousand dollars. The last step in the evolution of the demand for a single term with ineligibility for a second term was in the Democratic convention at Baltimore in 1912. One plank of the platform declared: "We favor a single presidential term and to that end we urge the adoption of an amendment to the Constitution making the President of the United States ineligible for reëlection, and we pledge the candidate of this convention to this principle."

Without doubt the adoption of such an amendment would mitigate many evils; but we have no evidence that evils as great, even if different, would not follow. The Constitution has served its purpose admirably, even though in every period of our history since its adoption there have been those who have argued many changes. Its effectiveness might be diminished by constitutional tinkering. Time alone could determine the wisdom of changes in our organic law relating to the term of the chief executive or to the question of reëligibility.

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THE DEVELOPMENT OF THE AMERICAN CENSUS OFFICE SINCE 1890

IN 1888 Francis Walker published what was probably the most important of his many articles on the census.[1] He had been superintendent of the two preceding enumerations and was then, as he had been for several years, president both of the American Statistical Association and of the American Economic Association. He was at the zenith of his influence, the most distinguished statist and economist in the United States. Of the many articles which he wrote on the census, the others dealt mainly with the elucidation of the figures. But in this he drew upon his long experience and ripened judgment for suggestions regarding the future development of census work in the United States and thus prepared what is probably the most important contribution to the progress of American census practice.

More than a quarter of a century has passed since his article was published. Much of what he prophesied is now history. It will be profitable to read the verdict of these twenty-five years upon his suggestions. He urged several improvements upon the practice he had known and in large part created.

The first was the omission of the hand trades or neighborhood industries from the census of manufactures. This was secured in 1905 and continued without protest in 1910. It is probably now settled procedure.

A second suggestion advocated the postponement of all the minor inquiries, not demanding the coöperation of the army of enumerators as field agents, until after the census proper was finished and out of the way. This plan was adopted in 1900 and continued in 1910. In this direction, however, Walker went further than the government has yet gone. He believed

[1] F. A. Walker, "The Eleventh Census of the United States," in *Quarterly Journal of Economics*, II (1888), pp. 135–161, reprinted in Discussions in Economics and Statistics, II, pp. 69–93.

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that a census of manufactures proper (factories, omitting the hand industries) could be taken by special agents with no help from enumerators, and that it should be so taken, independently of the census of population and of agriculture. This was the practice in 1905; but in 1910 the enumerators in some sparsely settled districts of the South and West collected schedules of manufactures. Those obtained in this way, however, related mainly to small establishments and constituted a small fraction of the total number.[1] The divorce of the census of manufactures from the enumerator may in time become the regular practice. If this should happen, the census of mines and mining, which is closely interlinked with that of manufactures, would naturally follow the same course, and the regular census would be limited, as Walker recommended, to population and agriculture.

A third suggestion was for a quinquennial rather than a decennial census of population and agriculture. The law of 1909 provides for a census of agriculture in 1915. If the needed appropriation is made, we shall begin next year upon a series of quinquennial agricultural censuses. The first quinquennial census of manufactures was taken ten years earlier. Perhaps in time we shall see the interval between successive censuses of population reduced to five years.

Walker's fourth suggestion was for the universal compulsory registration of all deaths. When he wrote, such registration was effective among less than one-fifth of the population. It is now effective among more than three-fifths and, spurred and guided by the federal government, it has been extending for ten years with great and accelerating rapidity.[2]

The substance of these suggestions has been carried out to a remarkable and gratifying degree. But the form in which they

[1] Annual Report of the Director of the Census, 1909–10, p. 36.

[2] While these pages are going through the press, the statistician who built up this system of voluntary coöperation between the federal and state governments has resigned and the system itself has been threatened. Unless it is retained, what is in the writer's opinion the most important gain resulting from the permanent census bureau, important not merely for what it had already secured but mainly for its promise of growing into a unique system of vital statistics, will be lost.

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have been realized was not the form that Walker foresaw. When he wrote his article, the most distinguished statist in public life was his old friend Carroll D. Wright, whose public career Walker had watched and in some measure guided. In Massachusetts, Wright had marked a statistical epoch by his administration of the state Bureau of Statistics of Labor; and in Washington for three years, as the head of the newly-created Bureau of Labor, he had been winning confidence and support on every hand. In Massachusetts he had had charge of the state census of 1875 and made it one of the few pieces of large constructive census work which the United States has to its credit. What more natural than that Walker should think of Wright as the best man to take the approaching federal census and to carry into effect some at least of the improvements outlined in his article? So he said that a simple and obvious way of securing these changes was by charging the permanent Bureau of Statistics of Labor with the duty of taking the approaching decennial census and later making the postponed minor inquiries.

In Walker's article there is no direct suggestion that the census office should be made permanent; but that such would be the result of adopting his other suggestions is clearly recognized and implied. Nor did he even imply that an independent office was desirable. But if the work had been assigned to the Bureau of Labor, which became an independent department without a seat in the cabinet in the year when Walker wrote, the country would at once have secured a permanent independent office in charge of the ablest statist then in public life, instead of waiting more than ten years for its independence and about fifteen years for its permanence.

The history of the census in the following twenty years turned mainly about the efforts to establish a permanent independent office.

Walker's suggestions for these radical changes came perhaps too late to influence the action of Congress in the following year. The encyclopedic census of 1880, planned by him as a centennial survey of our progress since 1776 and our existing economic resources, was imitated in 1890 with only minor modifications. While that work was still young, less than two

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years after Walker's article appeared, the secretary of the interior, on the recommendation of Superintendent Porter, declared that the decennial census would be far more complete and satisfactory if the census office were made a permanent bureau, saying: "A permanent census office would be undoubtedly in the interests of economy and of statistical science, and would result not only in more efficient work but in greater rapidity of publication." [1]

Probably this hint would have fallen on deaf ears in Congress but for two influences which reinforced it. One month after the secretary's report, a campaign on behalf of a permanent census bureau was started by the National Board of Trade. That organization had a committee on credits under the vigorous and energetic chairmanship of John A. Price of Scranton. His committee had already been instrumental in obtaining, through correspondence conducted by the Department of State, important and detailed information regarding private debts in foreign countries, and in adding to the census schedule of 1890 the inquiry into recorded private debts which finally ripened into the volume on *Real Estate Mortgages*. At the New Orleans meeting of the Board, Mr. Price introduced the following resolutions:

Resolved, That the National Board of Trade recommends to Congress the revision of the present census and statistical legislation and immediate provision for future enumerations with a view to better service and greater efficiency.

Resolved, That a committee be appointed to draft a bill and present the same to Congress, contemplating *permanence* of statistical and enumerating officials and a proper separation of the times in which enumeration of population required by the Constitution and the collection of general statistical information is [*sic*] made.[2]

The resolutions were adopted and then referred to the committee, which at once began a campaign in their behalf. A circular letter and a draft of a memorial were sent to more than thirteen hundred local boards of trade. Several hundred favorable re-

[1] Annual Report for 1888–1889, p. xvii.

[2] National Board of Trade, Proceedings 21st Annual Meeting (1890), p. 150.

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plies were received and forwarded to Congress, mainly in the first half of February, 1891. On February 16, the chairman of the Senate Committee on the Census, Mr. Hale, introduced the following resolution, which was adopted:

> *Resolved*, That the Secretary of the Interior is hereby directed to consider the expediency of the establishment of a *permanent* Census Bureau and to embody the results of his consideration with a draft of a bill, should he consider it expedient, for the establishment of such Census Bureau in a special report to be made to the Senate at the opening of the 52d Congress.

Before the report from the secretary of the interior was presented, the committee of the National Board of Trade, which had been asked to do much the same thing, met,[1] approved of all that had been done by its chairman, and decided that under the circumstances it would be best for the committee to cooperate with the secretary of the interior and the superintendent of the census, to whom the secretary had referred the Senate's resolution, and, if they found the report, when it appeared, satisfactory, to appeal to Congress on its behalf.

A month later the secretary of the interior transmitted to the Senate the report prepared by Mr. Porter in compliance with its resolution.[2] This report summarized the work of the twenty-three divisions of the office then engaged in taking the eleventh census and indicated how the work of each would be improved by the establishment of a permanent bureau. It added extracts from nearly two hundred replies to a circular letter from the superintendent of the census asking opinions about the expediency of establishing a permanent census bureau. These replies came from 44 American and 5 foreign statists, 15 churchmen, 45 representatives of commercial organizations, 53 state commissioners of agriculture or holders of similar positions, 10 officers of state boards of health, 8 officers of institutions and 14 officers of state bureaus of labor. Only two of the replies were adverse; but, as we are not told how many letters of in-

[1] In New York City, November 5, 1891.

[2] 52d Congress, 1st Session, Senate Ex. Doc. no. 1 (Dec. 8, 1891).

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quiry were sent out, the significance of this substantial unanimity in the answers might easily be exaggerated. Hardly any person would be actively opposed to such a change and the indifference of those who were indifferent would lead in many cases, no doubt, to a failure to reply. The report contained what is perhaps the earliest draft of a bill for a permanent census office, placing that office in the Department of the Interior. It was referred to the Senate Committee on the Census and ordered printed. A week later, the chairman of the committee introduced a bill[1] to establish a permanent census office and had it referred to his committee, from which apparently it did not emerge.

Three months after Superintendent Porter's report was received by the Senate, a resolution was introduced into the House of Representatives, asking its Committee on the Census to inquire into the expediency of establishing a permanent census bureau and to report to the House, and was referred to that committee. Acting under this resolution eight hearings were held during the next three months, at which nine well-known American statists[2] addressed the committee. A bill for a permanent census office in the Department of the Interior was drafted by the committee, included in the report and recommended for passage.[3] But this report was not presented until February 1, 1893, more than eight months after the close of the hearings and two months after the opening of the next session of Congress. Some days later an adverse minority report, signed by three of the thirteen members of the committee, was submitted. The minority's objections were that the census was already too extensive in scope and ought to be restricted. It opposed especially the proposal for a special census printing office and thought a permanent bureau unwise, unnecessary and extravagant. During this session, matters apparently went no further.

[1] Senate Bill 690, introduced December 14, 1891. 52d Congress, 1st Session, *Congressional Record*, p. 42.

[2] John S. Billings, Thomas Donaldson, Robert P. Porter, J. A. Price, J. Kendrick Upton, Francis A. Walker, Joseph D. Weeks, Frank R. Williams, Carroll D. Wright.

[3] 52d Congress, 2d Session, House Rep., no. 2393.

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It may not be fanciful to connect this lack of result with the untimely death a few months before[1] of Colonel Price, the only man not connected with the public service who had thus far spent much time and thought, and spent them wisely, in working for a permanent bureau. His position as one of the most prominent members of the National Board of Trade gave him an opportunity to wield a wide influence, his enthusiastic and tireless efforts to widen the scope of that board's activities had brought home to him the need of a permanent census office as an aid to business men, and he had insistently but tactfully pressed this need upon his colleagues and upon Congress.

The second influence supporting the department's suggestion of a permanent bureau was a widespread dissatisfaction with the results of the eleventh census, and a belief that those results afforded internal evidence of gross errors in the enumeration. For eight of the nine decades before 1880, that is, for all except the decade including the Civil War, the rate of increase in the population of the United States had been extremely uniform, ranging only from a maximum of 36.4 per cent to a minimum of 30.1 per cent. The minimum rate occurred between 1870 and 1880 and was commonly explained partly by the disastrous effects of the Civil War and of reconstruction in the South and partly by the business depression, slight immigration and low birth rate which followed the panic of 1873 and affected especially the North. For the seventy years before 1860 the decennial increase had varied only between 36.4 per cent and 32.7 per cent, and some such rate between 1880 and 1890 was confidently expected. The business prosperity during that period had resulted in an immigration of more than five million, fully double that in any previous ten years. When, in the teeth of these facts and of this expectation, the rate of increase as determined by the census of 1890 was found to be not only less than in any previous decade except that of 1860 to 1870, but only about three-fourths of the lowest ante-bellum rate, the result was widely doubted or denied. Even Walker said in 1891 that the census of 1890 could not be vindicated unless

[1] August 2, 1892.

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the birth rate between 1880 and 1890 had suffered a sharp decline.[1]

This distrust of the results in the whole country was rendered plausible and given currency by strong and, in my opinion, convincing evidence that in the enumeration of New York City perhaps one hundred thousand persons had been omitted and by the bitter and protracted controversy which arose between the city and the state of New York on the one side and the Census Office on the other regarding the demand for a recount in that city.[2]

As the National Board of Trade's campaign for a permanent census bureau ended with the death of Price, so the public dissatisfaction with the management and results of the eleventh census was allayed in 1893 by the change of administration and party in power, the resignation of the superintendent of the census and the designation of Commissioner Wright to complete the work. For at least two years little was heard about a permanent bureau. The ground had been prepared, but no person and no organization appeared to watch over the budding idea.

The next impulse apparently came from beyond the limits of the United States. In the summer of 1895, the director of the Swiss Statistical Bureau read a paper[3] before the International Statistical Institute then meeting in Berne, on the possibility of an international or general census at the end of the century. As a result of the discussion which ensued, a resolution was adopted asking a committee composed of the members who were heads of the census bureaus in the various countries to report upon the subject at the next meeting. A few months later Congress by joint resolution authorized the American

[1] The writer's belief expressed in 1897 "that the eleventh census is well within one per cent of the truth in its statement of the total population of the United States" (see American Economic Association, Economic Studies, II: 4, "Area and Population of the United States," pp. 232–248) was much strengthened by the corroborative evidence of the succeeding census. But this was several years after the period now in question.

[2] *Ibid.*

[3] International Statistical Institute, *Bulletin*, ix, 2, pp. 154, *et seq.*

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member of this committee, Commissioner Wright, to correspond and confer with the census officers of other countries on uniformity in future census inquiries. The same resolution revived the earlier and more practicable idea by instructing him to prepare a plan for a permanent census service.

In the interval between the Berne meeting and the introduction of the joint resolution of Congress, the economists and statists of the country had started an endeavor along parallel lines. At the meeting of the American Economic Association in December, 1895, Mayo-Smith read a paper on the "Desirability of a Permanent Census Bureau,"[1] and the association then appointed a committee to coöperate with a similar committee of the American Statistical Association, the two to promote, if possible, an effective coöperation with the United States authorities in the plans and methods of future census operations. That this may have had at least an indirect connection with the Berne meeting is suggested by the fact that the mover of the original resolution and two of the three members of the subcommittee which later, on behalf of the Economic and Statistical Associations, drafted the memorial to Congress were the two American members of the International Statistical Institute who had attended its meeting at Berne in the preceding summer. The joint committees and the commissioner of labor worked in actual, though not ostensible, coöperation, and their reports, one urging the need for a permanent and independent office and the other presenting a bill for securing that result, were laid before Congress within a few days of each other.[2] This memorial and report were apparently the first to suggest that the Census Office should be independent as well as permanent. In defence of this departure from the previous plans, Commissioner Wright wrote:

Any scientific office can conduct its work much more efficiently when

[1] American Economic Association, Economic Studies, I, pp. 107–115 (1896).

[2] The report of the commissioner of labor (54th Congress, 2d Session, Sen. Doc. no. 5) on December 8 and the memorial of the American Economic Association and the American Statistical Association (*Idem*, Sen. Doc. no. 68, pp. 37–39) on December 12, 1896.

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the head of it is alone responsible therefor. . . . I simply offer in this place my conviction that the scientific character of census work demands that it be carried on by an officer not subject to the political changes which come to the great departments.[1]

The memorial also asked for an independent census office.[2]

The American Statistical Association, which had been roused to action by the invitation of the American Economic Association, did not go beyond this memorial. But, a year later, at the suggestion of Mayo-Smith, the Economic Association returned to the subject and appointed a special committee of five members "to inquire into the scope and method of the eleventh census with a view to determining what ought to be attempted at the twelfth." The main result of this committee's labors was the publication of an octavo volume of five hundred pages containing twenty essays reviewing various aspects of census work and making suggestions for its improvement.[3] Partly in recognition of the Association's services, its secretary was immediately appointed as one of the scientific aides in the twelfth census.[4] While serving in that position, he secured the assistance of men schooled in economics and statistics for interpret-

[1] Report, p. 8.

[2] The signers of the memorial were the gentlemen named below; the names marked with an asterisk * are names of those who, I believe, were present at the discussion of the memorial in New York on the afternoon and evening of December 2, 1896.

Henry Gannett *	Henry C. Adams
Arthur T. Hadley *	John S. Billings *
Jeremiah W. Jenks *	Davis R. Dewey *
Richmond Mayo-Smith *	Elgin R. L. Gould *
Albert Shaw *	S. N. D. North *
Albion W. Small	F. W. Taussig
Francis A. Walker	Walter F. Willcox *
William Franklin Willoughby	Fred H. Wines *
Roland P. Falkner *	Francis A. Walker
For the American Economic Assn.	For the American Statistical Assn.

[3] The Federal Census; Critical Essays by members of the American Economic Association, published in March, 1899, the month that the law for the twelfth census was passed.

[4] See the writer's "The Plans for the Twelfth Census" and the following discussion in American Economic Association, Publications, Third Series, I, pp. 259–282.

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ing the population figures of the twelfth census to a greater degree than had previously been possible.[1]

Meantime a bill providing for taking the twelfth census and creating an *independent* office to perform that duty had been introduced in the Senate by the chairman of the census committee. After failing by a close vote in an effort to unite this office with the former Bureau, then the Department, of Labor, the Senate amended the bill by putting the proposed office in the Department of the Interior, the vote of thirty-nine to eight, or nearly five to one, perhaps measuring approximately the strength of the Senate's opposition to the multiplication of independent bureaus. In this changed form the bill passed the Senate in the early summer of 1898.

Soon after, a Committee on the Census was appointed in the House and, at the end of six months, reported a bill which passed that branch of Congress. The House bill agreed with the first form of the Senate bill and differed from its final form in making the office completely independent of any department and subordinate only to the president. The main reason for this change, as stated by the chairman of the House Committee, was that in 1893 the work of the preceding census had been seriously interrupted and damaged by the change of administration, of political party and of superintendent.

This difference was the main point of disagreement between the two chambers, and in the compromise which resulted from the conference the House won a substantial victory. Under the terms of the bill as passed, the Census Office was placed "*in* the Department of the Interior" but was no integral part of it. In the phrase describing the duties of the head of the new office, the words "under the direction of the head of the department" found in the Senate bill were omitted. The result was stated guardedly to the Senate, when that body was informed by the Conference Committee that "the power and authority of the director of the census is [*sic*] somewhat increased," and more specifically to the House, when it learned that the bill gave the director "full control of the Bureau and of the

[1] See Twelfth Census, Supplementary Analysis, *passim*.

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appointments of the employees and others." A few days later, the attorney-general interpreted the new law as making the director substantially independent of the secretary of the interior.[1]

With this law and decision as a cornerstone, the Census Office was organized and administered for four years in taking the twelfth census. The census reports were to be published within three years from the passage of the law, or two years from the count in the field, and the law was not to "be construed to establish a census bureau permanent beyond the twelfth census." But in another section the director, after the close of the census, was authorized to gather statistics upon a number of other subjects and to publish the results in a series of special reports. The inconsistency between these two provisions was reconciled by the passage in 1902 of the permanent census law, which did not repeal the earlier law for taking the twelfth census, but specifically reënacted all its provisions consistent with the later statute. The only material change which it made was the provision that all appointments to the permanent staff, while continuing to be made by the director, thereafter required in addition the approval of the secretary.

A year later the Census Office was transferred from the Department of the Interior to the newly created Department of Commerce and Labor "to remain henceforth under the jurisdiction of the latter." This transfer at once raised an issue of great importance to the department and to the office and of much significance for American statists and economists. Was the Census Office to sustain to the new department precisely its old relation to the Department of the Interior, was it to sustain the same relation as any other bureau under the general provisions of the statutes and administrative practice, or was it to sustain a relation of a type intermediate between these two? The director claimed that it should stand in the same relation to the new department as it had stood to the old; the secretary of commerce and labor claimed that his authority over the Census Office was equal to his authority over any other bureau.

[1] 22 Op. Att.-Gen. 413 (March 28, 1899).

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Some instances in which this fundamental issue found expression will elucidate its nature and scope.[1]

The secretary desired to correct various anomalies in the titles of the primary divisions of his department, changing that of the Department of Labor to Bureau of Labor, that of the Fish Commission to Bureau of Fisheries and that of the Census Office to Bureau of the Census. The attempt to introduce these changes by executive order was opposed on the ground that some at least of the old names had the direct authority of Congress, expressed in various statutes, and that no executive order could amend or repeal a statute. On this ground the solicitor of the Department of Commerce and Labor held that the changes could not be made without warrant from Congress,[2] but the attorney-general, to whom an appeal was taken, though he did not maintain that the secretary could abolish names established by Congress, decided that "there is no legal objection to the employment of two names or many names for the same object."[3]

The secretary desired to establish a single disbursing office for all the bureaus in the department and believed that the law gave him authority to suspend or abolish the disbursing office in the Census Bureau, although that division had been specifically mentioned in various statutes. He finally decided not to make the change, seemingly on grounds of expediency rather than of law. Some years later this question was submitted to the attorney-general, who ruled that the secretary had no such authority.[4]

The secretary desired to have a single seal for all divisions of the department. This was opposed by the Census Bureau on the ground that the statutory provision for its special seal had

[1] In tracing the history of this controversy I have been aided by the present director of the census, who courteously opened the office files to my examination, and by Congressman John W. Langley, who lent me his personal copy of the brief mentioned on p. 454.

[2] Manuscript opinion of May 19, 1903, reaffirmed May 29, after review had been requested by the department.

[3] 24 Op. Att.-Gen. 697 (June 22, 1903).

[4] 29 Op. Att.-Gen. 247 (Sept. 9, 1911).

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not been repealed by a later statutory provision for a departmental seal. The contention of the Census Office, sustained by the solicitor for the department,[1] was rejected by the acting attorney-general.[2] There was a similar difference of opinion regarding the authority of the secretary to modify the control over bureau printing exercised by the Census Office under previous statutes.

A few days after the Census Office was transferred to the Department of Commerce and Labor, a brief prepared by the director at the request of the secretary and stating the former's interpretation of the various laws governing the office was submitted to the attorney-general. The opinion by the acting attorney-general[3] upheld the secretary on all the issues raised and even went so far as by implication to throw some doubt upon his predecessor's decision,[4] under which the Census Office had been substantially independent of the department for the four years from 1899 to 1903. Thereafter for a time the relations of the two were assimilated to those between the other bureaus and the department, all appointments, including those of special agents, being made by the secretary and not by the director.

Seven months later, the controversy was carried to a different court of appeal. Before the last mentioned opinion had been rendered, the director had appointed a messenger. After the opinion had been rendered, it was interpreted by the department to mean that all powers of appointment previously conferred by statute upon the director were now vested in the secretary. The latter thereupon issued a new commission to the same appointee, but at a different salary. The auditor for the department, feeling unable to decide which of the two conflicting commissions was valid and which salary should be paid, referred the question to the comptroller of the treasury. That official held that the valid commission was the one issued by the director. He said:

[1] In manuscript opinion of June 30, 1903.

[2] 25 Op. Att.-Gen. 1 (July 2, 1903).

[3] 25 Op. Att.-Gen. 11 (July 14, 1903).

[4] 22 Op. Att.-Gen. 413 (March 28, 1899).

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It is a well-established rule of construction that where a general and a more specific provision relating to the same subject, either in the same or in separate acts, are in apparent conflict, the more specific provision is to be construed to operate as an exception to the more general provision.[1]

This rule of construction, upon which the comptroller based his reply and in support of which he cited a decision of the Supreme Court of the United States, led him narrowly to limit the secretary's authority over the Census Office, in seeming conflict with the earlier decision of the acting attorney-general, in which this rule of construction had not been mentioned.

A few months later a slightly different aspect of the same issue came before the Department of Justice. The specific question was whether special agents in the Census Office must take the oath of office required by the law of 1899. The acting attorney-general held that they must, because that part of the law was still in force and had not been affected by the clause in the law of 1902 repealing such provisions in the law of 1899, and such only, as were inconsistent with the permanent census act.[2]

The decision of the comptroller of the treasury is the only one in the series which mentions the "well-established rule of construction". The application of this rule to the three cases decided in favor of the department would apparently lead to a reversal of two, leaving the curious decision that a government bureau may have "two names or many names," as the only one favoring the department's contention.

At times the controversy extended beyond the limits of the department to Congress or the cabinet. Thus, after the name of the bureau had been changed by executive order, the new name, when introduced into bills before Congress, was stricken out before the bill was enacted and the old name restored. And, unless my memory or my information is at fault, when the secretary directed that the census schedules of manufacturing establishments should be open to the inspection of officials

[1] 10 Dec. Comp. Treas. 577 (Feb. 2, 1904).

[2] 25 Op. Atty.-Gen. 228 (Aug. 16, 1904).

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belonging to another bureau within the same department (the Bureau of Corporations) and the director refused to obey this order of his superior, because of the pledge of secrecy under which the information had been obtained, the matter was debated in the cabinet and the decision reached that the information on these schedules should not be so used by the government.

The foregoing are far from a complete list of the differences between the department and the bureau. The contention of the bureau rested on three grounds: first, in case of conflict between a statute and an executive order, the statute is the higher authority; secondly, as between an earlier and a later statute which appear to conflict, both are to be held valid, if possible, and, in the absence of express words of repeal, only an unavoidable implication will justify holding that the later statute repeals the earlier; thirdly, as between a more general provision and a more specific conflicting provision of different statutes both are to be held valid, the more specific provision establishing within its field an exception to the general rule.

The counter contention of the department was based partly upon the general clause of the United States Revised Statutes, "The head of each department is authorized to prescribe regulations not inconsistent with law for the government of his department" etc.,[1] and partly upon the words in the law creating the department and transferring to it from other departments certain bureaus etc., "to remain henceforth under the jurisdiction of the latter," and the words in section 10 of the same law, giving to the secretary of commerce and labor all power and authority possessed or exercised by the head of any executive department in and over any bureau, office, officer, board, branch or division of the public service transferred to the Department of Commerce and Labor.[2] It was maintained that these words by implication repealed conflicting provisions in the laws regarding the Census Office.

From a study of the arguments and conflicting decisions, I

[1] U. S. Rev. Stat., sec. 161.

[2] 60th Congress, 1st Session, Hearings before H. R. Com. on the Census, p. 94.

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conclude that on the main issues the position of the Census Bureau was legally impregnable. The administrative decisions favoring the department's contention either avoided all three grounds for the bureau's position or were definitely contradicted by later decisions.

But in this case, as happens so often, a position legally impregnable was strategically untenable.[1] The superior officer possessed and freely exercised the right to allow or disallow recourse to the legal advisers of the administration. Thus, two years after the transfer of the Census Office to the Department of Commerce and Labor, and after all these conflicting decisions had been rendered, the director of the census sent an elaborate brief to the secretary calling attention to the difficulty of reconciling them, and closing with a request that "steps be taken to have the matter authoritatively and finally settled at the earliest date practicable," but the brief seems to have been pigeonholed without action.[2]

The secretary possessed and used what was perhaps almost as good a weapon, the right either to ask for a review of an unfavorable decision by the official who had made it or to carry it on appeal before some higher officer, or to do both in sequence.

When legislation for the thirteenth census was under consideration, the director of the twelfth census testified thus:

THE CHAIRMAN. In view of the character of the work, Governor Merriam, what is your opinion as to the necessity of giving the director of the census a large latitude respecting emergency matters that may arise during the taking of the census?

GOVERNOR MERRIAM. I am firmly convinced that he should have the fullest powers assigned him possible. I remember that under the

[1] An interesting instance involving the same issue is narrated in the second chapter of Southey's Life of Nelson. The young captain chose to obey an Act of Parliament, the Navigation Act, in defiance of his admiral's orders. He escaped a court martial only because the admiral found that the officers who would have had to try him were convinced that the admiral's orders were illegal and on that ground would have acquitted Nelson.

[2] Search at the Census Bureau and inquiry at the Department of Commerce failed to disinter this brief. I am indebted to Congressman John W. Langley for the loan of his copy.

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act of 1899 there was some question arose as to whether the Census Office was independent of the Department of the Interior. It was referred to the attorney-general—General Griggs—and he decided it was. So I acted without reference to the secretary of the interior, under that decision. It is absolutely essential, in order that this work may be done properly, may be done rapidly, that the director should have the amplest power. In fact, I doubt very much whether the results can be attained in the allotted time otherwise. Emergencies arise, requiring prompt action and time is not allowed in which to seek advice through any department or select a clerical force. Clerks were frequently appointed and sent away in a day.

MR. LANGLEY. Sometimes by wire.

GOVERNOR MERRIAM. By wire, yes. One could not spend the time to submit lists of clerks to a higher authority. If this were attempted the director would break down physically under it, or he would not finish his work.[1]

This view of the requirements of the situation prevailed and the law as passed by Congress followed closely the lines of the law for the preceding census in making the office substantially independent of the department. That the decision by Congress was deliberate appears from the fact that the secretary sent two letters to the chairman of the committee in charge of the bill, in which he pointed out various objectionable provisions in the draft before the committee and suggested certain amendments which he desired to see introduced.[2] The general nature of his criticism appears from a closing sentence of the letter:

The work of taking the thirteenth census which involves the expenditure of approximately $14,000,000 should not in my opinion be attempted under a law which vests in a bureau chief unlimited powers with reference to practically every feature in connection with the work independent of the head of the department of which the bureau is a part.

While some of the suggestions of the secretary's letter were adopted, yet it led to no radical differences between the law for the twelfth and that for the thirteenth census.

[1] 60th Congress, 1st Session, Hearings before the H. R. Com. on the Census, p. 64.

[2] *Ibid.*, pp. 94–101.

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Thus the appeals of the department to the judges of administrative law, namely, the attorney-general and the comptroller of the treasury, had resulted, after some wavering, in upholding the bureau's position, and its appeals to Congress had led to repeated indications of a desire that the conditions prevailing between 1899 and 1903 should be retained with as little change as possible. Then the resignation of the director was forced, a statist from another division of the department was appointed in his place, and the thirteenth census was taken with a control exercised by the department over the bureau which was not contemplated by the law and had been definitely rejected by Congress.

In looking forward to the future work of the Census Bureau, economists and statists, it seems to me, should ask whether such an adjustment is satisfactory. This involves two questions: (1) Was the substantial independence of the Census Office from 1899 to 1903 warranted by the conditions of that time and justified by its results? (2) If so, does the transformation of the office into a permanent bureau, its transfer to a smaller department or any other change make an independent bureau less desirable in the future?

The Census Office from 1899 to 1903 was in charge of a man who, at the time of his appointment, knew no more of statistics and was no more interested in that subject than is the average man in public life. He was an able administrator and built up an efficient force which he drove at full speed towards the goal of compliance with the law by publishing the results within three years. He was interested mainly in the political aspects of his work; he quickly acquired and retained the confidence of both parties in Congress; and as a result was steadily and cordially supported in that quarter. The law was executed and, for the first and only time since the enormous expansion of the census in 1880, the results were readily available to the public within two years after the field work was finished. The director's lack of knowledge of statistics was probably an advantage, because it enabled him to concentrate his attention upon the other and, in the long run, the more important aspects of his problem. That his duties should be primarily administrative was also suggested or implied by the law, which said noth-

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ing about scientific attainments for the director, but did prescribe professional qualifications for his six chief subordinates, the assistant director and the five chief statisticians. The director's exclusive responsibility for all details of his work was probably indispensable to his success. The fact that the census of 1900 was the only one of the five since 1860 which aroused no serious dissatisfaction among the general public or in Congress or among professional statists and economists is to my mind inseparably connected with the concentration of authority and responsibility in the hands of one man. The substantial independence of the Census Office at that time was warranted by the conditions and justified by the results.

The second question, whether an independent bureau is needed now, is harder to answer. The work of the permanent Census Bureau is sharply divisible into two kinds, the decennial census, which takes about three years for its completion, and the intermediate inquiries. The first of these is emergency work of the most exacting kind. Walker's description, though written concerning a period when all inquiries were conducted simultaneously, still holds good:

> The labor of organizing and energizing a census is such as no man can conceive who has not himself undertaken it, or, at least, stood close by and watched the machine in full operation. . . . Taking a census of the United States under the present system and upon the existing scale is like fighting a battle every day of the week and every week for several months.[1]

This was from a man who had been a brilliant staff officer in the Civil War, had seen hard service and knew what his simile meant. But the success of the thirteenth census might be thought to prove that the method under which it was taken is adequate and satisfactory. There is force in the claim. Without going into the question of the degree of success with which it was managed on the administrative as distinct from the scientific side—a question remotely connected with my present theme and one upon which I do not feel qualified to render an expert

[1] Discussions in Economics and Statistics, II, 101.

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opinion—it may be replied that the last census, however satisfactory, was taken under more favorable circumstances than are likely to recur. The upheaval came in such a way that the secretary was deeply committed to making the change a success. Even though the emergency business of the bureau was regularly given precedence on his desk, it is hardly likely that the same would be true ten or twenty years later, as it certainly was not true twenty and thirty years earlier. The difficulty with the present organization of the Census Bureau may be expressed by saying that it is organized on a peace footing and yet at least once in ten years it has to fight a campaign. If a complete quinquennial census should be established, the situation would be even worse. I do not believe that in the taking of future censuses the present form of organization will prove satisfactory, but until the next decennial census is impending there is little need for a more independent bureau.

Closely connected with this difficulty is that of a change in directors at the threshold or during the course of a census. Certainly a change of administration and possibly a change of party in control of the federal government will come in the spring of 1921, when the next census is less than a year old and the tabulation is being rushed. A change of directors at that time might result from a change of administration and probably would result from a change of party. If it did occur, it would be accompanied by all the risks which proverbially attend swapping horses in the middle of a stream.

When new branches of the executive develop in response to a demand for the performance of new functions, they usually take the shape of new bureaus or new divisions within some department. Occasionally they have started and continued for a time as independent bureaus or departments with no representative or spokesman in the cabinet. In its early days and for long the Department of Agriculture was independent of all other departments, yet its head was without any place in the cabinet. More recently this was true of the Department of Labor, the head of which for seventeen years was subordinate only to the president, but had no cabinet position. When such a branch is in charge of a man whom Congress fully trusts, this

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independence may be granted and continued as a personal tribute. Under the system of salary gradation, it may be necessary in order to give the head of the office either the income necessary to keep him or the freedom of action necessary to his best efficiency. But when the special conditions change, the division is quite sure to lose its anomalous position and either rise into a full-fledged department or sink into the usual position of a bureau.

The Census Bureau seems to me unique in two respects; first, in the emergency high-pressure character of its work while a census is in progress; and, secondly, in the great importance of its being and appearing non-partisan and non-political. It must be so if its scientific results, not merely in the field of population, but in many more controversial industrial fields, are to retain the confidence of the public and of Congress. In what manner these requirements are to be met only the future can decide. All will doubtless agree that the present adjustment is transitional and temporary, that the old problem, a solution of which was worked out with much difficulty by coöperation of Congress and the country and scientific experts in the decade between 1890 and 1900, is still open, and that statists and economists ought to concern themselves with the present and the future of an office which is in danger of falling far short of the hopes they had cherished for it.

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UNFAIR COMPETITION[1]

A STUDY OF CERTAIN PRACTICES AND THEIR RELATION TO THE TRUST PROBLEM IN THE UNITED STATES II

VI. *Rebates and preferential contracts*

DISCRIMINATIONS in the form of rebates and preferential contracts are made by two classes of organizations:

A. Manufacturing and trading companies.

B. Transportation companies.

A. One of the most common methods of securing exclusive selling is by the use of a rebate. The factors' agreements of the American Tobacco Company from which the exclusive selling clause was quoted in the preceding section also contained the following provision:

Eighth. If, however, you handle cigarettes of our manufacture exclusively, and do not sell or distribute, or in any way aid in the sale, or distribution of, cigarettes of other manufacture, and if you, in all respects, fully comply with the terms and conditions of this agreement, we will pay you an additional commission of seven and one-half (7½)

[1] The first part of this study was printed in the POLITICAL SCIENCE QUARTERLY, vol. xxix, pp. 282–306. It enumerated eleven methods of unfair competition and gave consideration to the first five. The methods enumerated are the following:

I. Local price-cutting.
II. Operation of bogus "independent" concerns.
III. Maintenance of "fighting ships" and "fighting brands."
IV. Lease, sale, purchase or use of certain articles as a condition of the lease, sale, purchase or use of other required articles.
V. Exclusive sales and purchase arrangements.
VI. Rebates and preferential contracts.
VII. Acquisition of exclusive or dominant control of machinery or goods used in the manufacturing process.
VIII. Manipulation.
IX. Blacklists, boycotts, white-lists, etc.
X. Espionage and use of detectives.
XI. Coercion, threats and intimidation.

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per cent on the amount realized by you from the sale of cigarettes which we may consign to you.[1]

The exclusive sales contract for photographic paper in effect May 1, 1901, contained this clause:

On or about the 20th of each month a memorandum showing amount of previous month's net paper purchases will be sent each dealer from each factory. If this memorandum is returned at the time indicated thereon, properly signed and verified to the satisfaction of this company, a credit amounting to 12 per cent on the net purchases will be made. . . .

Fifteen per cent represents the full trade discount on paper, but *an extra credit* as stated above *is offered as a special consideration* for advantages accruing . . . through having our specialties sold in original packages and at a price that affords the dealer a profit large enough to warrant his energetically and *exclusively* pushing their sale.[2]

Of like nature is a provision drawn from the "Jobbers' License Agreement" of the recently dissolved Bathtub Trust, which reads: "7. If all the conditions of this agreement have been complied with and *you have confined your purchases to Licensed Manufacturers*, we will pay you rebates on such purchases as you have made from us . . ."[3]

In a similar manner the Cleveland Stone Company secures the exclusive handling of its grindstones. It offers a rebate of twelve and one-half per cent on the purchases made by jobbers in the period of the preceding six months if they have purchased exclusively from it.[4] In November, 1906, just prior to the period when the first independent glucose company

[1] Report and proceedings of the joint committee of the Senate and Assembly appointed to investigate trusts. State of New York, Senate Document no. 40, 1897, p. 880.

[2] Quotation is taken from the terms of sale supplied by W. S. Hubbell, counsel for the General Aristo Company. Report of the United States Industrial Commission on Trusts and Industrial Combinations (second volume on this subject), vol. xiii, p. 192. At that time the Eastman Kodak Company was the trade agent to market all the goods of the General Aristo Company. Italics are the writer's.

[3] Italics are the writer's. United States *v.* Standard Sanitary Manufacturing Company. Record, *cit. supra*, vol. ii, pp. 34–35.

[4] United States *v.* Cleveland Stone Company. Petition, *cit. supra*, p. 20.

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placed its products upon the market, the Corn Products Refining Company is alleged to have offered to the trade a profit-sharing or rebate plan. The purpose of the plan was to secure compliance with the exclusive handling and selling clause referred to in the previous section.[1] The Corn Products Refining Company and its subsidiaries agreed to set aside for payment to their customers, out of the profits of the last six months of 1906, a sum equal to ten cents per hundred pounds upon all sales of glucose and grape sugar made to such customers. This payment was to be made on December 31, 1907, on the condition that customers should purchase exclusively from the company during the balance of the year 1906 and all of the year 1907. It is alleged that this plan was continued until 1910.[2]

A second and different kind of discrimination appears in the cases of the American Can Company and the former Electric Lamp Combination. It is claimed that the American Can Company was organized and has since been controlled by the same interests that originally organized the American Tin Plate Company. In December, 1903, the United States Steel Corporation effected an inter-company consolidation by which the American Sheet Steel Company purchased the property of the American Tin Plate Company. At the same time the name American Sheet Steel Company was changed to American Sheet Steel and Tin Plate Company. With this organization the American Can Company is alleged to have made preferential contracts for tin plate. Thereby it was enabled to purchase its plate for the manufacture of cans at lower prices than were independent manufacturers.[3]

The government charged that the Electric Lamp Combination entered into preferential contracts with the Libby Glass Company, the Fostoria Bulb and Bottle Company, the Phoenix

[1] *Supra*, section v in part i.

[2] United States *v.* Corn Products Refining Company. Petition, *cit. supra*, pp. 20–21.

[3] United States of America *v.* American Can Company and Others. Original Petition, U. S. D. C. for the District of Maryland, p. 18. It should be borne in mind that the American Sheet, Steel and Tin Plate Company produces approximately sixty per cent of the domestic output of tin plate.

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Glass Company and the Corning Glass Works. These four were "substantially the only manufacturers" of glass bulbs and tubing in the United States. The combination, on condition that these concerns should sell to independent lamp manufacturers, *only* at higher prices than it was itself compelled to pay, agreed to purchase from them its entire supply of these materials. A contract of a similar nature was also made with the Providence Gas Burner Company, the sole manufacturer of bases in this country.[1]

B. The doctrine that railroad rebates constitute unfair competition as against those concerns not benefited thereby is now so well established that it requires little examination or discussion. The history of the old Standard Oil Company is replete with instances of railroad rebates. It is true that with the passage of interstate commerce legislation there disappeared many of the more open forms of rebates which had characterized the earlier history of that organization. But this does not mean that the Standard ceased to be the recipient of favors. On the contrary it continued to enjoy advantages over competitors that were equivalent to rebates, at least in their effect upon competition. Secret rates, discriminations in open and published rates against independent as compared with Standard Oil refining points, blind and false billing and discriminations in the classification and rules for the shipment of oil may be enumerated as among such advantages.[2]

Industrial "tap lines" also furnish opportunities for disguised rebates. The Corn Products Refining Company owns switching railroads which connect its four principal plants at Pekin, Granite City, Argo and Davenport with the trunk lines. Through rates are made by the switching and trunk lines in conjunction with one another. The government asserts that prior to March, 1910, the share of these rates which was given to the switching lines was excessive as compared with the service actually performed. This practice was equivalent to a

[1] United States *v.* General Electric Company. Petition, *cit. supra*, pp. 35-36. Note that these practices were forbidden by the decree of the court.

[2] Report of the Commissioner of Corporations on the Transportation of Petroleum.

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rebate from the railroad company of a part of the freight rates. It was finally forbidden by the rulings of the Interstate Commerce Commission.[1] The situation just outlined does not differ greatly from those cases where "tap line" services—the handling of products from the place of production to the main line of the railroad—are furnished free of charge. In a recent opinion on this latter point the Interstate Commerce Commission expressed the following view:

> What we decide . . . is that these practices are unlawful in themselves because they are rebates, in fact and in effect, and also give undue and unreasonable preferences and advantages to the industries so favored and work undue and unreasonable prejudice and disadvantage to shippers in the same business who do not receive any such allowances or rebates and who do not receive the benefit of any such services.[2]

The same reasons which make exclusive sales and purchasing arrangements unfair must likewise render unfair all rebates so far as they may be used to effect such arrangements. Rebate provisions similar to the first five described in this section are much more likely to prove an effective instrument in securing exclusive selling and purchasing than are either the imposition of fines or the threat of a refusal to supply goods. The one makes an appeal to the purchaser's cupidity. The others are likely to arouse more or less hostility and opposition which may result either in a refusal to enter into exclusive arrangements or to abide by the terms of such as chance to have been made.

It requires little demonstration to show that open or disguised rebates and also preferential contracts are unfair competition. Each confers a similar unfair advantage, though in slightly different ways. A lower transportation rate given to one concern than to other and competing concerns enables the former to lower its prices by the difference between the two charges. When materials which enter into the productive process are sold to one organization at lower prices than to its competitors, the same result occurs. In both cases that productive efficiency

[1] United States *v.* Corn Products Refining Company. Petition, *cit. supra*, p. 28.

[2] *New York Times*, January 28, 1914.

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which may have enabled marginal concerns to compete is rendered powerless; and such organizations, if any there be, will be compelled to discontinue business. It is also true that not even the most highly efficient competing organizations will be able to maintain themselves if the differential between either the two prices for transportation or the two prices for materials becomes sufficiently great. At the same time the beneficiary of rebates and preferential contracts may be notoriously inefficient—so inefficient that it could not exist for a moment under economically fair competition. Yet under the unfair conditions described, little or no competition whatsoever may be able to survive.

As the deferred rebate contracts of various steamship "conferences"[1] result in an unfairness of a somewhat different character than that which is occasioned by railroad rebates, they have been reserved for separate discussion. The deferred rebate is explained in the Report of the Royal Commission on Shipping Rings as follows:

> The Companies issue a notice or circular to shippers informing them that, if at the end of a certain period (usually four or six months) they have not shipped goods by any vessels other than those dispatched by members of the Conference they will be credited with a sum equivalent to a certain part (usually 10 per cent) of the aggregate freights

[1] This term was defined by the "Royal Commission" as follows: "A Shipping 'Ring' or 'Conference' is a combination more or less close of Shipping Companies formed for the purpose of regulating or restricting competition in the carrying trade on a given trade route or routes." *Cf.* Report of the Royal Commission on Shipping Rings with Minutes of Evidence and Appendices, vol. i, part ii, p. 9. Further quotations from the same report indicate more clearly the nature of the "Conference" or "Ring." "The operations of a Conference are confined to a particular trade route, that is to say, the engagements which the various lines enter into with one another only apply to the trade within certain definite areas or between specific ports. A Steamship Company may be a member of several Conferences, but its engagements in one are independent of those in any other. . . .

The main objects with which a Conference is formed are two. It is formed primarily to regulate competition between the Companies with a view to maintaining regular rates of freight. This object is achieved by means of an agreement or understanding between the Lines that they will charge the same rates of freight. . . .

The second object is to concert measures to meet the competition of ship owners outside the Conference." *Ibid.*, p. 9.

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paid on their shipments during that period, and that this sum will be paid over to them, if at the end of a further period, (usually four or six months), they have continued to confine their shipment to vessels belonging to members of the Conference. The sum so paid is known as a deferred rebate.[1]

As applied to American conditions the deferred rebate has been used at one time or another by "conference" lines sailing to and/or from American ports and South and East Africa, Argentine, Brazil, Central America, Jamaica, Porto Rico, Trinidad, and various ports in the Far East.[2]

The chief unfairness of competition under railroad rebates is one between the shippers over the lines of a railroad. One organization is enabled by the preference afforded it to injure and destroy others perhaps equally efficient but not equally favored. This situation apparently does not result from the deferred rebate contracts of the steamship conferences at least so far as American trade is concerned. As a report submitted by the representatives of certain steamship lines to the Committee on the Investigation of Shipping Combinations phrased it:

> The system of deferred rebates to loyal shippers has none of the evils of the secret rebate which was formerly employed by railroads. *Rebates* which exist in certain trades from distant countries to the United States are *open* and *public*. . . . *Any merchant may obtain the benefit of this published allowance* by complying with the terms of the circulars.[3]

If these statements are true,[4] and so long as they continue to be true, the deferred rebate contracts of the steamship confer-

[1] Royal Commission on Shipping Rings, *cit. supra*, vol. i, part ii, p. 9.

[2] Proceedings of the Committee of Merchant Marine and Fisheries in the Investigation of Shipping Combinations, pp. 118–119, 124, 148, 171–172, 174, 279, 282, 310, 323-5, 418, 429, 527, 879-880, 906, 1209, 1222–23.

[3] Italics are the writer's. Report submitted to the Committee on Merchant Marine and Fisheries by the committee appointed by the representatives of the steamship lines maintaining established service from New York to foreign countries, including Porto Rico and the Philippines. Committee on Investigation of Shipping Combinations, *cit. supra*, p. 1369.

[4] The evidence seems on the whole to indicate that they are.

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ences do not work an unfairness which enables one shipper to injure and destroy a competitor.[1] This being the case, it is necessary to seek elsewhere to discover the reason for regarding deferred rebate contracts as unfair. Suppose a steamer sails with a cargo from New York to Brazil, expecting to secure shipments of coffee or other commodities to fill its hold on the return voyage. Obviously its chances of accomplishing this object are small, since a conference agreement with deferred rebate contracts exists in the trade from Brazil to New York, although not in the opposite direction. If a merchant ships by this steamer, which is not a member of the conference, he loses his rebates, not only for the rebate period in which he makes the shipment, but also those of the prior rebate period, payment of which has been deferred. Nor will it usually avail this steamer anything to offer reduced or even greatly reduced rates. This is because the amount which the shipper would gain by violating his contract will seldom, if ever, amount to a sum approaching that which he receives if he complies with his agreement.

Under conditions of true economic competition it is clear that the lowest bidder would secure the freight. The deferred rebate prevents this result. Consequently it must be regarded as unfair competition. Its inevitable tendency as well as its acknowledged purpose and intent is to destroy all competition in the carrying trade and place it in the hands of the parties to the conference agreement. While believing that deferred rebate contracts must be regarded as unfair competition, the writer is far from contending that competition in the transoceanic steamship trade is either necessary or desirable. A large part of this traffic may be not unfairly described as monopolistic in character. A considerable number of commodities

[1] It might be asked if a shipper who repeatedly broke his contract by shipping over other than conference lines would always be allowed on his application to ship under the terms of the deferred rebate contract. If not, he would obviously be discriminated against as compared with other companies. In this case the contract would be open to the same criticism as are rebates given by railroads. Little if any discrimination of this sort, however, seems to have been practiced. Mr. Barber testified that his own company had even paid the deferred rebates when they had been forfeited by shippers who had broken their contracts by utilizing other than conference lines.

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require a certain regularity and rapidity in transportation service. The amount of this type of freight is frequently not large enough to afford a profit to more than a relatively small number of vessels. If unlimited competition is permitted, the tendency would probably be for the necessary regularity and rapidity to disappear. Lines which had maintained these conditions would be compelled to withdraw, since it would no longer be profitable to have regular sailing dates nor to devote to this service steamers sufficiently large and powerful to supply rapid transportation.

Important as these considerations are, they cannot alter the conclusion that under present conditions deferred rebate contracts constitute unfair competition. Yet they are significant, since they show that there are fields in which the principle of free competition is economically unsound. Possibly, indeed probably, there are other lines of business besides that of the trans-oceanic steamship traffic to which this statement would apply with equal force. It certainly seems desirable that some form of regulation should be adopted which will recognize the necessities of ocean steamship traffic. A line maintaining a regular and rapid service between certain ports would appear entitled to charge a somewhat higher rate for it. Nor does it seem just that its traffic should be subject to the mercy of any chance tramp steamer that may drop into port to secure a cargo. Yet the difficulty of adequate regulation is great. The trade is between different countries. Many objections therefore exist to a form of regulation similar to that afforded by the Interstate Commerce Commission. The ideal solution would probably be a commission composed of the representatives of the great carrying nations. This body would designate the conference areas, determine the conditions under which steamship lines could become members and prescribe the circumstances under which "tramps" and similar vessels might compete with the conference lines for cargo. The system in vogue at present is designed to and does shut out competition within the conference area. However desirable rapid and regular service may be from the standpoint of the shipper, however necessary to maintain these conditions deferred rebate contracts may

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be, they are none the less unfair to competing steamers and lines. Under no circumstances except the strictest governmental regulation should they be permitted.

VII. *Acquisition of exclusive or dominant control of machinery or goods used in the manufacturing process*

Attempts to acquire control of the machinery necessary to the manufacture of goods date from more than two decades ago. On or about April 30, 1887, the Standard Envelope Company[1] made a contract with Lester and Wasley of Norwich, Connecticut, to purchase all the envelope machines which that firm might make or sell during the five succeeding years. At the same time Lester and Wasley on their part agreed not to furnish more than twenty-four machines in any one year.[2] Whether or not this firm was the sole manufacturer of envelope machinery does not appear.

A similar plan of action with reference to cigarette machinery was pursued by the old American Tobacco Company following its organization in 1890. By securing and maintaining for some time the exclusive control of the most successful cigarette machinery, the American was able to strengthen its dominant position in the cigarette business. The Kinney and Kimball companies, both parties to the organization of the American Tobacco Company in 1890, used the Allison cigarette machine, the patents for which were owned by one of the members of the Kinney company.[3] Charles G. Emery, the first treasurer of the American Tobacco Company, was the inventor of the Emery machine which Goodwin and Company—another of the constituent members of the 1890 organization—had been using. At the start, therefore, the American acquired control of these

[1] The Standard Envelope Company was a corporation of Massachusetts organized by, and used as a clearing house for, a combination of several of the largest envelope manufacturers of the United States. For a brief account of the organization and operation of this combination, see an article by the writer in the *American Economic Review* for September, 1913, vol. iii, p. 561.

[2] Report of the Committee on General Laws, on the investigation relative to trusts. New York Senate Document, no. 50, 1888, p. 469

[3] These machines did not prove satisfactory and were later discarded.

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two machines. Soon after it also made a contract with the Bonsack Machine Company for the privilege of the exclusive use and control in the United States of the Bonsack machine. The American had the right to cancel the contract if the Bonsack company failed to secure for it the exclusive use of that type of machine prior to March 1, 1891. It might also exercise the same right whenever as many as one hundred million cigarettes were manufactured in this country within a period of twelve consecutive months by factories of concerns outside the combination, or on machines not controlled by the Bonsack company. In conformity with this agreement, the Bonsack Machine Company terminated its contracts in force with outside manufacturers, and the American continued the use of the machine under this contract until the year 1895.[1]

According to the government, the only companies in the United States which formerly manufactured suitable and efficient electric-lamp-making machinery were the York Electric and Machine Company and Elmer F. Dwyer, the latter trading as the Dwyer Machine Company. By the terms of certain agreements, the Electric Lamp Combination, through the National Electric Lamp Company, acquired all the patents, applications and machinery on hand which these organizations possessed. In addition, the York and Dwyer companies agreed to refrain from making lamp-making machinery, except for sale to the members of the combination.[2]

In the latter part of 1913 the government brought suit against the American Can Company. That concern was charged with acquiring control, at or subsequent to its organization, of the principal can-making machinery plants of the United States, together with most of the valuable patents for making that machinery. In some cases, this result was accomplished through long-term contracts with patentees for controlling the disposi-

[1] Adverse judicial decision lost the Bonsack Company the exclusive right to the use of the most important parts of its machine. On January 2, 1896, therefore, the American ceased to pay royalties and to have the exclusive right to the use of the Bonsack machine. Report of the Commissioner of Corporations on the Tobacco Industry, part i, pp. 66-67.

[2] United States *v.* General Electric Company. Petition, *cit. supra*, pp. 34-35.

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tion of the machinery manufactured under their patents; in others, by the purchase of licenses which the owners of patents had issued to manufacturers of cans; in still others, by obtaining contracts not to sell such machinery to other parties.[1]

In January, 1914, the Graham Wood Company of Brooklyn brought suit against the Standard Wood Company and the Greene Manufacturing Company in the supreme court of New York County. The Greene Manufacturing Company manufactures machines known as "presses," which are useful and necessary in the manufacture of bundled kindling wood. In return for an annual consideration of $5000 the Greene Manufacturing Company appointed the Standard Wood Company its exclusive sales-agent and further agreed not to sell any press without the consent of the Standard Wood Company. The action of the Graham Wood Company was brought primarily on account of the injurious results of a refusal to sell such machinery to it.[2]

Somewhat different from the cases just described are those in which the control which is acquired is that of the articles or materials which enter into the manufacturing process. The greater part of the supply of raw paper used in the manufacture of photographic papers throughout the world is said to be in the hands of the General Paper Company of Germany. This organization is alleged to control the output of Blanchet Freres, Kleber and Company of France, and Steinbach and Company of Germany, the largest mills in Europe. Prior to December, 1906, when the control of the General Paper Company was almost complete, the General Aristo Company, which is controlled by the Eastman Kodak Company, is alleged to have contracted to purchase the entire supply of raw paper exported by the General Paper Company to the United States. This contract, it was claimed, was continued from 1906 to 1910.[3]

[1] United States *v.* American Can Company. Petition, *cit. supra*, pp. 12–17.

[2] United States of America *v.* Standard Wood Company and Others. Original Petition, U. S. C. C. for the Southern District of New York, p. 14; Graham Wood Company *v.* Standard Wood Company and the Greene Manufacturing Company, Supreme Court, New York County. Typewritten copy of Motion for Judgment, pp. 1–2.

[3] United States *v.* Eastman Kodak Company. Petition, *cit. supra*, p. 25.

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While it is true that there are some smaller manufacturers of raw paper in Europe, the fact still remains that independent companies were excluded from the largest and most desirable source of supply. Mr. Dailey testified that the Photographic Supplies Combination first secured control of raw paper imported from Germany about the year 1899.

> Some of the American manufacturers had contracts with the manufacturers in Germany, so they were protected for a certain length of time; and these which were thus protected the General Aristo Company purchased as far as possible . . . . But I had no contract at that time, and consequently I was shut off from a supply of raw paper almost completely, although I was able to get some of certain kinds.[1]

The government has charged the Aluminum Company of America with endeavoring to obtain such a control of the bauxite properties of the United States as would prevent anyone but itself from producing metal aluminum.[2] Prior to 1905, the Aluminum Company of America possessed valuable bauxite properties, yet it did not approach control of even fifty per cent of the total bauxite supply of the United States. In that year, however, the company through the General Chemical Company, acquired the capital stock of the General Bauxite Company. As part consideration for this contract, the General Chemical Company agreed that it would not use or sell bauxite sold to it by the General Bauxite Company for conversion into metal aluminum, but would use it solely for the manufacture of alum, alum salts, alumina sulphate and similar products.[3] In 1909, a contract was made with the Norton Chemical Company for the purchase (with one reservation) of the bauxite properties of the Republic Mining and Manufacturing Company, whose capital stock was owned by the Norton company. The latter

[1] Testimony of Mr. W. B. Dailey. Report of the Industrial Commission, *cit. supra*, vol. xiii, p. 183.

[2] Metal aluminum is manufactured from bauxite.

[3] Sections Fourth and Eighth of the Contract between the General Chemical Company and the General Bauxite Company, quoted in United States of America *v.* Aluminum Company of America. Petition in Equity, U. S. D. C. for the Western District of Pennsylvania, p. 17.

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might mine and use bauxite from a certain forty-acre tract of bauxite land, and might also mine it and sell it for any purpose except for the manufacture of aluminum.[1]

In considering these contracts made by the Aluminum Company of America, it should be borne in mind that this organization is alleged to control nearly one-half the stock of the Aluminum Castings Company, thirty-seven per cent of the stock of the Aluminum Goods Manufacturing Company, and to be sole owner of the stock of the Northern Aluminum Company and the United States Aluminum Company, manufacturers of aluminum cooking utensils.[2]

Apart from any question as to the legality of these arrangements, it is submitted that the cases cited are instances of unfair competition. Such contracts and agreements are clearly an interference with the economic rights of others. Through the difficulty or impossibility of procuring the necessary tools or materials, individuals are hindered or prevented from undertaking a particular line of business. It cannot therefore be doubted that this method is a powerful deterrent to prospective competitors. Again, after independents have undertaken a certain line of business, such contracts or agreements may seriously hamper their operations or even force their discontinuance altogether. The economic efficiency of a given organization may be great, but without free access to the machinery and goods required for the manufacturing process, it cannot compete except at an enormous disadvantage.

VIII. *Manipulation*

The term "manipulation" for want of a better has been employed to include certain practices and methods which have occasionally appeared. It is charged that when the Naval Stores Export Company began active business, the Naval Stores Combination inaugurated a fierce trade warfare against it. The Naval Stores Export Company accumulated a considerable quantity of resin and spirits of turpentine. Much of this

[1] Sections Tenth and Eighteenth of Norton Chemical Company Contract, quoted United States *v.* Aluminum Company of America, *cit. supra*, p. 19.

[2] *Ibid.*, pp. 12–14, 29.

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stock was hypothecated with banks. By manipulation the combination then caused the Savannah market for turpentine to decline some thirty per cent within a period of a couple of weeks. The Export company was requested to furnish additional margins. This it was unable to do, and as a result was forced to sell out its accumulated stock at losses which nearly wiped out its capital stock.[1]

The case of the Pennsylvania Sugar Refining Company is familiar to many. Some years ago Adolph Segal began the construction of a sugar refinery in the city of Philadelphia. During the process of construction, and while Mr. Segal was hard pressed for cash, he was offered a loan by one Gustav E. Kissel, a broker for an undisclosed principal. The offer was accepted. In return for the loan, a majority of the stock of the refinery company and all the bonds were deposited with Kissel, and written authority was given him to exercise the voting power of the stock.[2] The undisclosed principal was in fact the American Sugar Refining Company. A few days after these arrangements were completed, Kissel attended a meeting of the board of directors of the Pennsylvania Refining Company and caused four of the seven directors to resign and himself and three others subject to his control to be elected to fill the vacancies. The majority of the board then adopted and spread upon the minutes of the company the following declaration: "*Resolved*, That the refinery do not run and that no proceeding looking to the beginning of operation be taken until the further order of the Board."[3]

Manipulation has also been charged against the Aluminum Company of America in delaying the forwarding of bills of lading and in abruptly ceasing to ship aluminum metal to con-

[1] United States of America *v.* American Naval Stores Company, *et al.* Petition in Equity, U. S. D. C. for the Eastern Division of the Southern District of Georgia, pp. 11–12.

[2] *Cf.* Agreement, Exhibit L, United States *v.* American Sugar Refining Company, Petition, p. 213 ff.

[3] Quoted from resolution cited in United States *v.* American Sugar Refining Company. Petition, *cit. supra*, p. 87. *Cf.* for further details, Hearings on the Investigation of the American Sugar Refining Company, 62d Congress, 1st session, 1910–11, vol. ii, pp. 1276–1285.

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cerns competing in the manufacture of aluminum-finished goods, without giving any warning of its intention. In this way independents were hampered and prevented from filling their orders.[1] Such acts were possible because of the large control of bauxite fields possessed by the Aluminum Company of America.[2]

The effect of these methods is too obvious to require more than brief comment. In the Naval Stores example, the organization attempting to compete was practically destroyed. In the Sugar Refinery case, a potential competitor was stifled and suppressed.

IX. *Blacklists, boycotts, white-lists etc.*

Most of the cases of blacklisting and boycotting which the writer has been able to discover are in connection with the operations of various wholesale and retail trade organizations. In these cases such methods develop out of the practice known as classification. A few words are therefore necessary in order to explain classification. As indicated by the writer in another article,[3] there has appeared for some years past a noticeable tendency toward a more economic system for the distribution of goods. This tendency has manifested itself in the increasingly large number of commodities which are disposed of without the assistance of middlemen, either wholesalers or retailers. As a result, the interests of wholesalers or jobbers and retailers are to a certain extent in harmony. They both desire to prevent shipments directly from the manufacturer to the consumer. In addition the wholesaler may be said to be interested in the prevention of shipments from the manufacturer to the retailer while the retailer is equally concerned in preventing any shipments from the wholesaler or jobber to the consumer.[4] The purpose

[1] United States *v.* Aluminum Company of America. Petition, *cit. supra*, p. 23.

[2] See *supra*, section vii.

[3] *American Economic Review*, September, 1913, vol. iii, p. 555.

[4] This situation is indicated in the following quotation taken from the Boston agreement of the Lumber Trade Associations:

"Second. That the National Wholesale Lumber Dealers' Association take up and consider the pronounced and recognized evils from which both branches* are suffering, viz:

*"Both branches" means wholesale and retail.

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of classification may be said to be to confine trade to what the various wholesale and retail associations regard as its legitimate channels, i. e., from manufacturer to wholesaler, to retailer, to consumer. Steps are taken and rules formulated to classify the trade into these four groups, manufacturers, wholesalers, retailers, and consumers. The usual method is by the use of more or less arbitrary definitions of each one of these terms.[1] On this classification is based the standing of any concern in the trade.

Let us examine the ways in which this classification is used. In the first place several trade associations publish trade lists known by various titles as "Red Books," "Green Books" or "Blue Books." In these lists are published the names of all individuals, firms and corporations regarded by the trade (in accordance with the rules of classification mentioned) either as wholesalers or retailers, as the case may be. Such a list of retailers would indicate to manufacturers or wholesalers those concerns which were regarded by the trade as the legitimate customers of either or both. A list of wholesalers or jobbers would give a similar indication to the manufacturer. Only those individuals and concerns appearing in such lists (or in separate classification sheets issued by some organizations) are entitled to obtain goods at the trade discounts which are allowed the different classes. Obviously the "Red," "Blue" and "Green Books" operate as a fair list. Concerns not listed are of two classes: first, those which are not regarded by the trade as legitimate wholesalers or jobbers on the one hand, or as legitimate retailers on the other; second, those whose names may have been removed from the list because of a violation of so-called trade ethics.

1. Sales by manufacturers and wholesalers to consumers.

2. Sales by brokers, agents, and commission men to consumers.

3. Sales and quotations by the so-called retail dealers to consumers, through agents, and by methods used by the wholesaler in soliciting trade from retailers,"

Cf. United States of America *v.* Eastern States Retail Lumber Dealers' Association and Others. Original Petition, U. S. C. C. for the Southern District of New York, Exhibit F, p. 81.

[1] On classification compare the following proceedings: United States of America *v.* Colorado and Wyoming Lumber Dealers' Association, *et al.* Bill of Complaint,

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A second way in which a trade association may work out its intention to confine trade to certain channels is by the use of recommended lists. Thus a retail association might issue a list of wholesalers or of wholesalers and manufacturers from which it was recommended that its members should buy. Shipments made directly to consumers by concerns upon this list would, when discovered, be reported to members of the association. The implication which would be drawn from such reports would be that association members should cease trading with the offending concerns. Names might be removed from preceding lists of offenders by a statement to this effect. Usually this has been done only after proper adjustment has been made with the association. An illustration of this practice is shown in the following circular:

Official report of the Eastern States Retail Lumber Dealers' Association, 18 Broadway, New York, N. Y.

Statement to members, April, 1909.—You are reminded that it is because you are members of our association and have an interest in common with your fellow members in the information contained in this statement, that they communicate it to you, and that they communicate it to you in the strictest confidence . . .

The following are reported as having solicited, quoted, or as having sold direct to the consumers:

[Here follow the names of several score concerns.]

REMOVED SINCE LAST REPORT.

[Here follow the names of fifteen concerns.]

Members, upon learning of any instance of persons soliciting, quoting, or selling direct to consumers should at once report same, and in so doing should, if possible, supply the following information: The number and initials of car, the name of consumer to whom car is consigned, the

U.S.C.C. for the District of Colorado, Eighth Judicial Circuit, p. 10 ff.; United States of America *v.* Edward E. Hartwick and others. Original Petition, U. S. C. C. for the Eastern District of Michigan, Southern Division, p. 111.; United States of America *v.* Southern Wholesale Grocers Association, *et al.* Decree of Injunction, U. S. C. C. for the Northern District of Alabama, p. 4 ff.; United States of America *v.* Pacific Coast Plumbing Supply Association and Others. Petition in Equity, U. S. C. C. for the Southern District of California, p. 12 ff.; United States of America *v.* Eastern States Retail Lumber Dealers' Association and Others. Petition, *cit. supra*, pp. 18–56.

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initials or name of shipper, the date of arrival of car, the place of delivery, the point of origin.[1]

A number of similar circulars and letters might be quoted did space permit.[2]

It is submitted that these acts on the part of trade associations must be regarded as unfair competition. When methods are used to induce an individual not to purchase from certain persons or concerns, such methods must be regarded as unfair. It has already been indicated that economic competition, competition upon the basis of efficiency, requires that an individual shall not be restricted in the purchasing of the machines or materials which enter into the manufacturing process. In like manner such competition demands that a manufacturer or dealer be permitted to sell freely to whomsoever he pleases. Except under the strictest governmental regulation and supervision, no organization should exercise the power to injure and destroy the business of any concern because that concern chooses to sell to such customers as it wishes. It may even be doubted whether an organization should be allowed to exercise this power under any conditions whatever. The development of the methods here discussed has to a considerable extent been due to the growth of larger units of selling organization; the large retailer, the chain store, the department store, the mail-order house and coöperative associations. In part, at least, the object of such methods is to prevent the economic efficiency

[1] United States *v.* Eastern States Retail Lumber Dealers' Association. Original Petition, Exhibit U, pp. 98–100.

[2] In this connection and on this general subject *cf.* United States *v.* Eastern States Retail Lumber Dealers' Association. Petition, *cit. supra*, Exhibits J, K, L, O, S, T, W, X, Y and Z, p. 88 ff.; United States of America *v.* Willard G. Hollis and Others. Petition, U. S. C. C. of the District of Minnesota, Exhibit A, p. 69; United States *v.* Southern Wholesale Grocers' Association, Decree of Injunction, p. 5; United States *v.* Hartwick. Original Petition, *cit. supra*, Exhibit A, p. 42; United States *v.* Pacific Coast Plumbing Supply Association. Petition, *cit. supra*, pp. 12–14; United States of America *v.* Master Horseshoers National Protective Association of America and Others. Petition in Equity, U. S. D. C. for the Eastern District of Michigan. Southern Division, p. 18 ff.; United States of America *v.* Philadelphia Jobbing Confectioners' Association and Others. Petition in Equity, U. S. D. C. for the Eastern District of Pennsylvania, pp. 5-9.

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of these larger units from having full play. Large sales units are steps in the direction of a more economic system of the distribution of commodities. If their competition were not unfairly restrained by classification and similar methods, it is probably true that they would force many of the smaller selling units to the wall. It should be borne in mind, however, that no system is economically defensible which maintains in business large numbers of individuals who could not exist under the conditions of a competition that is based solely upon efficiency.

Another one of the uses of the principle of boycott is in connection with the enforcement of the exclusive selling, price maintenance, or other clauses of factors' agreements. Thus the New York Trust Investigation of 1897 contains a list of several concerns, whose consignment agreements with the American Tobacco Company were revoked. In some cases this was because of the fact that they had handled opposition goods, in others because they had cut prices.[1] When methods are employed to effectuate ends which are in themselves unfair competition, such methods must also be regarded as unfair. In so far, therefore, as the principle of boycotting is or may be utilized to enforce exclusive handling or selling it ought to be considered as unfair. In so far as the same principle may be used to secure price maintenance no opinion upon the question of unfairness is expressed, since a discussion of price maintenance lies outside the scope of this paper.

X. *Espionage and use of detectives*

It is a well-known fact that more than one organization has used extremely questionable methods for tracing the business of competitors. There are, for example, masses of evidence in regard to this practice as used by the old Standard Oil Company. That organization obtained much information in regard to the business of competitors from the reports of oil inspectors and by bribing railroad officials. It also made extensive use of spies and detectives for following the tank wagons of competitors and

[1] New York Trust Investigation, 1897, *cit. supra*, p. 913 ff.

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thus tracing the source of their business.[1] The testimony in the suit brought by the United States against the old Powder Trust revealed analogous practices.[2] There is also a considerable degree of similarity between the methods employed by the old Standard Oil Company and those used by the National Cash Register Company. According to testimony the latter organization made use of Pinkerton detectives in 1904 and 1905 to spy upon competitors.[3] In fact the entire history of this organization is replete with examples of the employment of spies and detectives to look after opposition business and to follow competitors' agents.[4]

An interesting instance of obtaining information is furnished by the case of Otto Nelson;

Q. . . . where was Otto Nelson? A. He was in Boston.

Q. What was he doing at Boston? A. He was gathering what information he could from competition standpoint and reporting shipments.

Q. Reporting shipments to whom? A. To dealers or agents.

Q. Reporting shipments of what? A. The Lamson cash register.

Q. To whom did he report these shipments? A. To the factory.

Q. To the National Cash Register Company? A. Yes.

Q. And do you know how he would learn of those shipments? A. No, I do not.

Q. Where was he located? A. I only know from what he said; he told me that he rented a room across the street and used a spy-glass to read the addresses.

Q. That is, used a spy-glass to read the addresses of what? A. On boxes.

Q. What boxes, of the Lamson machine? A. Yes.[5]

[1] Standard Oil Company *v.* United States. Brief for United States, *cit. supra*, vol. ii, pp. 589–623.

[2] United States *v.* E. I. Du Pont de Nemours and Company. Pet. Rec. Testimony, *cit. supra*, vol. i, p. 257 ff.

[3] State *ex rel.* James *v.* National Cash Register Company. Supreme Court, State of Michigan. Record, vol. i, pp. 602–603; vol. ii, pp. 988–990.

[4] *Ibid.*, vol. i, pp. 54, 69, 86–87, 99, 425–427, 454–455; vol. ii, pp. 915, 938, 1019, 1162–1163, 1200–1204, 1221–1223.

[5] Testimony of J. E. Warren. State *v.* National Cash Register Company. Record, vol. i, pp. 414–415.

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In the case of the Lumber Trade associations it is alleged that detectives have been employed for the purpose of tracing shipments of lumber from manufacturers and wholesalers direct to consumers.[1] In this case the espionage practiced may be regarded as supplementary to classification and the various lists issued by the trade associations. It is true as a general proposition that espionage appears only in conjunction with other unfair practices. In this way it may serve simply as a function of local price-cutting, the operation of bogus concerns or other equally reprehensible practices. Indeed it is almost impossible to conceive of a reason for gathering information with the minuteness which these methods usually involve unless such information were to be used to inaugurate a campaign of other unfair practices.

It is assuredly true that the productive and selling efficiency of an organization is to a considerable extent dependent upon its knowledge of the exact state of trade and its own position in that trade with reference to competitors. In the interests of its economic efficiency a concern is entitled to keep track of its competitors through all ordinary business channels, such as the reports of salesmen and similar methods. On the other hand, the resort to the use of detectives for tracing the business of competitors, the bribing of inspectors and railway employees, and analogous practices are and should be regarded as acts of unfair competition. The only purpose that information of this character can serve is to be used as a function of one or another of the unfair practices already described. All the requirements of productive and selling efficiency can be fulfilled by information obtained through ordinary business channels and without resort to practices of such description.

XI. *Coercion, threats and intimidation*

What acts may be regarded as threats, as coercive, or as intimidating is a not uninteresting question. Not every one will agree that a given statement, letter or act is, or is intended to be, of this character. It is not unlikely, therefore, that there

[1] United States *v.* Hollis. Petition, *cit. supra*, pp. 54–55.

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will be some disagreement as to the correctness of the illustrations which will be cited.

In order to obviate some of the "tieing" provisions in the Shoe Machinery Company's leases which manufacturers found so obnoxious, the legislature of Massachusetts in 1907 enacted a law which provided among other things that

> No person, firm, corporation, or association shall insert in or make it a condition or provision of any sale or lease of any tool, implement, appliance, or machinery, that the purchaser or lessee thereof shall not buy, lease, or use machinery, tools, implements . . . of any person, firm, corporation, or association other than such vender or lessor; . . .

In spite of this statute the United Shoe Machinery Company continued to use practically the same contract as had previously been employed. To it, however, was attached the following rider:

> Any and all agreements, stipulations, provisions, and conditions hereinbefore printed in this instrument which are in violation of the provisions of chapter 469 of the acts of the General Court of Massachusetts for the year 1907, if there are any such, are hereby stricken out before execution and are not agreed to nor made a part of this contract.
>
> Independent of and in addition to all other rights hereunder the *lessor shall have the right to terminate this lease and license at any time upon 30 days' notice in writing to the lessee.*[1]

Is the last paragraph of this lease a veiled threat to cancel leases for all machines if any concern did what the law intended to give it the permission to do? Is the intent here to coerce, to compel manufacturers to use the machines of the United Company, no matter what they had the privilege of doing under the law? Mr. Charles H. Jones, testifying in regard to the last paragraph above quoted, termed it a "joker," and "a 'joker' of a very serious nature."

It reads "independently of and in addition." Please observe that

[1] Italics are the writer's. Committee on Judiciary *cit. supra*, Trust Legislation, Serial No. 2; Patent Legislation, Serial No. 1, p. 72.

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their right to terminate upon 30 days' notice does not depend upon, or is not in consequence of any violation on our part. It gives them the arbitrary right to terminate this lease at any time, with or without reason, upon 30 days' notice." [1]

In other words, if a shoe manufacturer did that which the law gave him power to do and the Shoe Machinery Company then revoked his lease for essential machines, the company probably could not be proved to have done so because of that particular act. The shoe manufacturer might have every reason to believe that this was the case, but the point would be difficult, if not impossible, of proof.

A Mr. Stanborn contracted to manufacture some shoe machines for Mr. Plant (who later was able to invent and produce all the machines necessary for the manufacture of shoes). The Shoe Machinery Company insisted very strongly that Mr. Stanborn should not assist Mr. Plant, but Mr. Stanborn refused to be guided by the company. Within three months afterward, the United Company placed upon the market, stock-fitting machines similar to those which Mr. Stanborn manufactured on such terms "as effectually prevented even his best friends from buying any of this machinery of him at all." [2]

At a meeting in St. Louis in 1902, the Lumber Secretaries' Bureau of Information [3] adopted a constitution and by-laws and also a declaration of purpose from which the following quotation is taken:

> We recognize the right of the manufacturer and wholesaler to sell in whatever market, to whatever purchaser, and at whatever price they may see fit.
>
> We claim for ourselves, . . . the right to buy of such manufacturers or wholesalers or their agents as we may prefer, and to refrain from buying of those who disregard the equities of trade to our injury and the demoralization of the retail lumber business.[4]

[1] Testimony of Charles H. Jones. Trust Legislation, *cit. supra*, Serial No. 2; Patent Legislation, Serial No. 1, p. 73.

[2] *Ibid.*, p. 68.

[3] The Lumber Secretaries' Bureau of Information was an organization composed of the secretaries of various state retail associations of lumber dealers.

[4] United States *v.* Hollis. Petition, *cit. supra*, p. 44.

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It may reasonably be inquired whether or not this is to be construed as a threat or is intended to coerce the manufacturers and wholesalers to prevent them from selling direct to consumers.

It was related by Mr. William B. Dailey that the Photographic Supplies Combination in an endeavor to enforce its exclusive selling arrangements discussed under section v above, called on dealers personally, and did not send out circulars or written matter which could be used against it. Mr. Moreau of the Eastman Kodak Company visited New York, calling on some of the dealers. The conversation which took place, as the dealers related it to Mr. Dailey, ran somewhat as follows:

> Now, Mr. So-and-so, of course you understand that we must get more money for our goods; . . . We are giving you the full list price and we protect you and we expect you to stop handling these other men's paper. Of course, we are not making any threat; we do not say you have to do it, you understand, but you know we control cameras and films on which we have patents, and if you could not get these other goods it would be very disagreeable for you.[1]

Only brief reference will be made here to the methods of intimidation used by the National Cash Register Company.[2] The "historical room," facetiously nicknamed the "graveyard", which was maintained by that organization, has already received much notoriety. It was a display room in the factory at Dayton in which were exhibited the registers of competing cash-register companies which for one reason or another had discontinued business. Display cards with each register reported the name of the company, date at which they went out of business, amount of money lost etc. The purpose of this extensive exhibit was to convince any one considering going into the cash-register business that it would be unprofitable to do so.[3] On a

[1] Report of the Industrial Commission, *cit. supra*, vol. xiii, p. 184.

[2] The methods of competition used by the National Cash Register Company are so extensive and present so many variations and intricacies that they are well worth separate study. They will be fully discussed in an article which the writer has in preparation.

[3] Testimony of J. E. Warren. State *v.* National Cash Register Company. Record, *cit. supra*, vol. i, p. 462.

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par with this method was the issue of circulars purporting to contain the names of various cash-register companies which had ceased to engage in business. A list of January, 1910, reads in part as follows:

DEAD CASH REGISTER COMPANIES

Within the past 15 years 158 cash-register companies have been organized to compete with the National Cash Register Co. Of these, 153 have failed in business. Their combined capital was $5,735,000. Their combined loss was $1,970,000. According to sworn affidavits of its officers, the Boston Cash Register Co. alone lost $192,750.08. Of every 20 cash registers sold, 19 are Nationals.[1]

Only one judgment can be passed upon acts of this character. Their purpose and intent is clearly and obviously to prevent competition. In some of the cases mentioned they may and probably do injuriously affect existing competition. Their principal unfairness, however, lies in preventing potential competition from becoming actual. In the cash-register instance this is self-evident. The effect of the rider attached to the Shoe Machinery Company leases was to continue in force the "tieing" restrictions criticised in section iii of this article and which the legislature of Massachusetts had intended to eliminate. The declaration of policy of the Lumber Secretaries' Bureau of Information was equivalent to a warning of the consequences of not conforming to the ideas of the retail lumber associations in regard to trade ethics. The coercion applied to dealers in photographic supplies could scarcely fail to affect injuriously the business of competing manufacturers. When the tendency of these acts is to injure existing efficient competition, they are unfair. If the tendency is for them to prevent a competition based upon economic efficiency from arising, they are equally reprehensible, possibly more so.

XII. *Conclusion*

The eleven methods of unfair competition that have been reviewed by no means include all of the unfair practices and methods which have been and are being employed. This study

[1] United States *v.* National Cash Register Company. Petition, *cit. supra*, p. 25.

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is intended simply to indicate the uneconomic character of such competition and to furnish some idea of the variety of forms which it may assume. The review of these practices naturally prompts one to consider their significance.

In any satisfactory solution of the trust problem the fundamental question to be considered is the interest of the consuming public. In a word, this interest is the procurement of the best goods at the lowest prices. So long as this requirement is fulfilled, it is of little moment to the consuming public who produces the goods. If the public is to obtain the best goods at the lowest prices, those units of organization which have the highest productive and selling efficiency must be preserved. If the productive and selling efficiency of a great combination or monopolistic organization is such that it can sell better goods at lower prices than can its competitors, there is from the standpoint of the public no disadvantage in such a form of organization, provided, the public receives the benefit of this superior service. If on the other hand a great combination or monopolistic organization cannot sell better goods at lower prices, if either of such units retains its position, not by productive and selling efficiency but through other methods, it is equally clear that such units are highly undesirable from the standpoint of the public. In the last analysis the test is and should be efficiency. If free competition can serve the public better, can give the best goods at the lowest prices, drastic steps should be taken to secure competition, steps much more drastic than have yet been employed. If, however, combinations and monopolies can give the better service, let us by all means adopt them as fundamentally necessary. Having done so, organizations of this character can be so regulated as to insure that they will give the public in the form of lower prices the benefit of their superior efficiency.

Unfair competition has beclouded the issue between competition on the one hand, and combination and monopoly on the other. Today it is impossible to determine their comparative value to society. We have no means of knowing in how many cases the development of large monopolistic units has been due to superior productive and selling efficiency, in how

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many cases it has been due to unfair practices. In almost no case has competition had an opportunity to work freely. Almost invariably it has been restrained and restricted by practices of the character described. To arrive at a sound economic solution of the trust problem, a solution, in other words, that is based upon the relative efficiency of competing and monopolistic units of organization, it is absolutely necessary to free business and industry from the artificial restraints imposed by unfair competition. Thus only can we determine to what extent free competition is efficient and able to survive. Coincidently we shall for the first time be able to observe to how great an extent large combinations and monopolistic units will be able to maintain themselves in the face of free and unrestricted competition.

The writer is persuaded that the only satisfactory solution of the trust problem is to be found in the preservation of productive efficiency. If this means competition, let us compel competition; if it means combination and monopoly, let us by all means preserve those features.

But while entertaining this general view, the writer is also inclined to believe that most large combinations and monopolies will not be able to justify their existence under conditions of fair competition. The predominant position which many of these organizations occupy today and have occupied in the past is largely the result of unfair competition. No student of the history of the National Cash Register Company is likely to believe that the predominance of that organization could have been secured without the unfair methods which it employed. Without local price-cutting, the old powder trust could scarcely have secured its monopolistic position. The cost of undertaking the maufacture of powder is too small, and a local custom or trade may be too easily developed. Many will be inclined to believe that the old Standard Oil monopoly would have been impossible without the favors of the railroads and the use of unfair practices. So one might multiply instances of organizations, in whose history the use of unfair methods has played a prominent part. When these methods are as conspicuous as in the three cases just mentioned, they point strongly to

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the conclusion that they have been fundamental factors in trust development. Eliminate unfair practices and methods and you will render it exceedingly difficult for industrial predominance to be attained in the future.

Aside from the results which the elimination of unfair competition will have upon *future* combination and monopoly, there is also to be considered the effect which it will have upon the predominance of *existing* units. In but few cases can it be anticipated that present monopolistic organizations will be able to maintain themselves. If unfair practices be not merely prohibited but eliminated, a few years will witness a substantial decline in trust power.

For example, consider the National Cash Register Company. Scores of concerns have embarked in this business. In the great majority of cases they have been killed off by the most unfair and reprehensible methods. If those methods are prevented, the resultant effect upon the cash-register monopoly in the next decade or two can hardly be doubted.

The Steel Corporation seems to have employed practically no unfair methods. What is the result? Although the absolute output of the Steel Corporation has steadily increased since its organization, its relative output has pronouncedly declined. More specifically, "the result has been that whereas at its organization in 1901 the Corporation may be fairly said to have controlled about 60 per cent of the entire crude steel and finished steel business of the country, at the close of 1910 its percentage was not much over 50 per cent."[1] This represents a decline of sixteen per cent in its proportion of control. It is merely an indication of the efficiency of competition when artificial restrictions are not imposed. It is worth noting that this decline took place in spite of the acquisition of the Tennessee Coal, Iron and Railroad Company and several other concerns. Had these acquisitions not been made, the relative decline must have been considerably greater.

The International Harvester Company furnishes a somewhat

[1] Report of the Commissioner of Corporations on the Steel Industry, part i, p. 373. *Cf.* ch. ix, *ibid.*, pp. 359-377, for a complete study of the relative position in the steel industry which is occupied by the Steel Corporation.

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similar example. The Harvester Corporation has not been guiltless of unfair methods of competition. It appears to be true, however, that in recent years, since 1906 or 1907, little or no unfair practices have been employed. The three principal harvester lines are binders, mowers and rakes.

In each of these three lines the International claims that it has lost ground in relative total output. In 1903 it controlled the following percentages of the business of the United States: binders 98.15 per cent; mowers, 92.05 per cent; rakes, 84.90 per cent. These percentages of control are claimed to have declined to the following: binders, 85.04 per cent in 1912; mowers, 72.98 per cent in 1912; rakes, 67.79 per cent in 1911.[1] If these figures are correct the Harvester Company in a period of less than a decade has lost about the following percentages of its proportion of the total business: binders, 13 per cent; mowers, 20 per cent; rakes, 20 per cent.

Liberate industry from unfair competition and for the first time in our industrial history you will have competition that is based upon economic efficiency. Such competition will go a long way in the direction of solving the American trust problem. If competition based upon productive and selling efficiency is the only competition that will be tolerated, that competition will show an enormously increased effectiveness over present competition hindered and hampered as it is by unfair practices. At the same time the abolition of unfair methods will bring into actual operation a vast amount of potential competition now either absolutely suppressed through devices like the Shoe Machinery "tieing" clauses or else deterred by other practices which have been described.

The next point of inquiry is the method by which unfair practices are to be eliminated. Perhaps this could be accomplished under the Sherman Act. But if it were, a radical change would be necessary in the attitude of the Department of Justice and of the courts toward enforcing that statute. Many proceedings involving unfair competition have been equity proceedings, and injunctions have been issued against various practices.

[1] United States *v.* International Harvester Company. Statement, Brief and Argument for Defendants, p. 189.

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When the criminal clause has been invoked, punishment has frequently taken the form of insignificant fines.[1]

The writer disbelieves that a mere injunction or fine will destroy unfair practices. An injunction is not always obeyed.[2] A fine is scarcely likely to be effective so long as the profits of unfair practices are sufficiently great to leave a surplus over and above it. It is submitted that unfair competition should be penalized by imprisonment *only*. In fact, the writer is somewhat inclined to believe that the only restraints of trade that are deserving of such punishment, are unfair practices.

Since many are not clear as to the meaning of unfair competition, that term should be defined or explained by law. By this it is not meant that specific enumeration should be resorted to. In many cases unfairness cannot be determined except with reference to the consequences of a given act. The definition of unfair competition, therefore, should be general in terms. Any act or method of competition which hampers, injures or destroys concerns which could compete on the basis of their productive and selling efficiency should be forbidden, as should also any method except productive and selling efficiency which prevents potential competition from becoming actual competition. The power of deciding the question of fact as to whether or not a given act or acts are unfair, would rest under this general definition in the hands of the jury. The predetermination of specific enumeration without regard to the actual results and consequences of prohibited acts would thus be avoided, and no injustice would be done. This program may seem drastic but it is no more drastic than are the measures which have been taken by some organizations in order to destroy competition. Drastic wrongs demand drastic remedies.

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[1] No one has yet gone to prison for the violation of the Sherman Act. In one case where a conviction was secured the fine imposed by the court was $265. Several convictions show fines of less than $5000.

[2] *Cf.* Contempt Proceedings against the Southern Wholesale Grocers' Association for failure to obey the injunction of the court.

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TOOMBS AND STEVENS[1]

THE biographies of Robert Toombs and of Thaddeus Stevens may be placed together by way of antithesis. Toombs was, if not exactly the leader, at least conspicuous among the leaders in the great drama of secession. Stevens was almost the soul of the even greater drama of reconstruction. Secession and reconstruction are in a sense complementary to each other. It is fitting, therefore, that these contemporaneous biographies should be reviewed together.

Both authors are trained historians who succeed in maintaining throughout their accounts an admirable spirit of impartiality. Though each is sympathetic with his subject, the attitude of personal aloofness is much more perceptible in Professor Phillips's book than in Professor Woodburn's. The former author gives without indication of his own feeling the point of view of Toombs in regard to the political issues of his time, and devotes a considerable portion of his attention to setting forth the underlying conditions which caused Toombs and other southerners to defend slavery and secession. On the other hand, Stevens was the champion of individual liberty and nationalism, both of which are still living principles. Hence one is not surprised to find that Professor Woodburn has injected a great deal of personal feeling into his narrative. He makes no effort to conceal that, in the main, he believes his subject's motives were worthy and just. Though there are expressions of regret for some of Stevens's personal characteristics and political methods, yet on the whole the book is frankly a defence of the career of a man who by southern writers has been regarded as the embodiment of vindictiveness and malignity, and who, even from northern historians, has received but scant justice and little or no sympathy.

Although both Professor Phillips and Professor Woodburn give sufficient accounts of the events in which their subjects participated to render their careers intelligible, neither professes to have written a "Life and Times." Toombs and Stevens were contemporaries and for several years were members of Congress together, yet not once does Professor Phillips mention Thaddeus Stevens, and only once or twice does Pro-

[1] The Life of Robert Toombs. By Ulrich Bonnell Phillips. New York, The Macmillan Company, 1913.—ix, 281 pp.

The Life of Thaddeus Stevens. By James Albert Woodburn. Indianapolis, The Bobbs-Merrill Company, 1913.—iii, 610 pp.

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fessor Woodburn refer to Toombs. Then he merely voices the common opinion that he was "one of the more violent of the southern 'fire-eaters'," who persistently advocated secession (pages 85–86). On the other hand, Professor Phillips finds that "Toombs was primarily an *American* statesman with nation-wide interests, but the stress of the sectional quarrel drove him into a distinctly *southern* partisanship at the sacrifice of his *American* opportunity" (pages viii–ix).

Toombs was born in 1810 in the region known as "Middle Georgia." His father was a rather well-to-do planter and naturally a slave-owner. Young Toombs's character was stamped by "the freedom from care in which planters' sons were reared, by the abundant opportunity for indoor pranks and outdoor sports, the affectionate and indulgent admiration of the slaves, the camaraderie of the neighbors' children, the fond care of parents, the devotion of brothers and sisters, and the somewhat capricious discipline of primitive schoolmasters" (page 11).

Contrast with this environment that into which Stevens was born, and we have the explanation of the antithetical points of view from which these men regarded the great questions of their time. Stevens was born in Vermont in 1792, and grew up "in a democratic society where the great mass of the people were engaged in making a plain living by industrious toil and where an aristocracy of wealth and rank were practically unknown" (page 2). Toombs's father was sufficiently wealthy to give his son a college education without making any financial sacrifice, but it was only by dint of the greatest self-denial that Stevens's mother was able to send her boy to college. Thus in their early circumstances and environment we have the key to the future careers of these two men—Stevens, the defender of individual liberty and universal freedom, because these were the principles to which he was accustomed from his early life; Toombs, the lover of his own liberty and even of that of his race, but the defender of slavery for the negroes, because it was slavery that made possible his life of ease and freedom from care.

Toombs entered Georgia politics at about the time the Whig party was beginning to take form. Professor Phillips gives an excellent explanation of the reason why that party came into existence in Georgia.

> The negro-slave-plantation system created and maintained in the southern community a great special vested interest, clashing from time to time with the local non-slaveholding interest and with the manufacturing interests in the northern states. The planters were always a minority of the voting population in their several states and in the United States; and for the sake of security to their régime they were obliged to find and retain allies in both local and national politics. . . . The waves of Jeffersonian and Jacksonian

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Democracy put the conservatives of the South (the planters and their allies) upon the defensive. Neither of these movements paid heed to the peculiar basis of plantation industry, and each in turn threatened danger to the fabric. The champions of the established régime had to support it against each of these waves, and to use for their purpose such means and such allies as could be found. Hence the career of the southern Federalists in Jefferson's time and the southern Whigs in Jackson's [page 25].

A variety of property interests in the North likewise opposed the Jacksonian ideas of democracy; and it was with these representatives of these interests that the southern Whigs formed an alliance.

With faith in their own sound intentions and their own ability they [Toombs and his southern colleagues] assumed their share of the burden, on the one hand of keeping the whole Whig party united and on the other of making their party, as much as they could, respect and uphold the chief claims of the South. They were prepared, for example, to make concessions in regard to the tariff and a United States Bank in order to procure concessions in turn upon the slavery issue [page 33].

So when Toombs entered Congress in 1845, "he pursued uniformly a course calculated to conciliate the sections and to maintain the Whig party as a Union-strengthening organization" (page 35).

Toombs doubted the wisdom and questioned the constitutionality of the annexation of Texas. He was frankly opposed to beginning war with Mexico. In discussing the probable terms of peace, he expressed the hope that the United States would refrain from taking any of Mexico's territory as an indemnity. But in case new territory were to be acquired, Toombs bitterly denounced the Wilmot Proviso as unjust and discriminatory. He declared that the southern states "would remain in the Union on a ground of perfect equality with the rest of the Union, or they would not stay at all" (page 42). Concerning the speech in which Toombs enunciated the foregoing views, Professor Phillips says:

The conflict of functions indicated in this speech gives the key to Toombs' whole congressional career and to the tragedy of its failure. He was the painstaking and scrupulous guardian of the whole country's honor and welfare without regard to section, and for the sake of promoting national harmony he was a loyal Whig; but whenever others less national-minded than he precipitated angry sectional issues he was driven by both reason and impulse to uphold with might and main what he considered the essential rights of the southern people [page 43].

In 1848 Toombs strove to have General Taylor nominated and

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elected to the presidency, as he reckoned that Taylor, a southern slave-holder, would by the exercise of the veto power, if necessary, prevent the application of the proviso principle to the territory newly acquired from Mexico. Great was Toombs's chagrin when in the fall of 1849, "he became convinced that Taylor was a supporter of the Wilmot policy. Toombs was thus driven when the new Congress met in December, 1849, to relinquish his Whig regularity, at least for a period, and concentrate all his efforts upon the safe-guarding of southern rights" (page 48). From this time until the death of President Taylor, it seemed to Toombs and the other southern leaders that all the principles for which they contended were destined to be overridden by the increasingly large free-state majority in Congress. Toombs and his colleagues therefore felt that if the contest should have this issue, it would be incumbent upon them to secede in order to protect southern interests. At this point in his narrative of Toombs's career Professor Phillips makes one of his wisest observations.

> It is often said that the United States Constitution established a government of the people, by the people, and for the people; but in the light of experience it may more truly be said to have provided the machinery for a government of the people, by the political majority, in behalf of the interests which control that majority [page 49].

Those who share this view and bear in mind that the South was becoming more and more in a minority will be inclined to agree with Professor Phillips in his statement of the four alternative policies which Toombs and his colleagues found open to them as a result of the onslaughts which were being made by the North against their predominant interest, slavery. These four policies were:

> [1]. They [the southerners] might concede that racial adjustments in the slaveholding states needed drastic change, and bespeak advice and assistance from the North in its accomplishment. This policy was generally considered inexpedient in view of abolitionist and anti-slavery intolerance. . . . .
>
> [2]. They might plead for national harmony and the right of local self-government and hinder the rise of such issues as should seem likely to foster sectional antagonisms. . . .
>
> [3]. They might instead of a policy of avoidance adopt a resolution not only to repel the attacks on the outworks of the southern position but to throw its assailants upon the defensive by counter attacks. . . . .
>
> [4]. They might despair of safeguarding southern interests within the Union and adopt the policy of establishing a separate nationality [pages 51-52].

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Toombs had followed the second of these policies until well into the Proviso struggle. "He then adopted the third policy, and from that time forward he held in favor the fourth policy, secession, as an ultimate recourse in case he should become convinced that all other means of preventing southern oppression would prove of no avail" (page 54). It was in pursuance of this third policy of aggressive defense that Toombs supported the Compromise of 1850 and successfully used his influence in prevailing upon the southern people to remain in the Union and abide by the provisions of the Compromise.

In 1854 Toombs was elected to the Senate, but he did not take his seat until a few days after Douglas had introduced his famous Nebraska Bill and had incorporated into it the Dixon amendment, which repealed in terms the Missouri Compromise. Toombs knew nothing of Douglas's plans, and when he reached Washington toward the end of January, 1854, he found that all the prominent southerners had committed themselves irrevocably to the bill as amended, and "he could do nothing but embrace the inevitable."

Toombs sincerely regretted the disturbances which resulted in Kansas in consequence of the application to that territory of the principle of "popular sovereignty." In June of 1856, he offered in the Senate a bill, which he believed would bring peace to the distracted community. It provided

> that under the superintendence of a presidentially-appointed commission to prevent fraud and intimidation a census should be taken in Kansas; that all white males twenty-one years old who were bona fide residents, found by the census takers, should be registered as voters; that these voters should in the coming November elect delegates to a constitutional convention, and that Congress should admit Kansas as a state promptly with whatever constitution, republican in form, that the convention might adopt [page 125].

This bill passed the Senate, which was Democratic; but in the Republican House it was smothered. Professor Phillips very correctly remarks that "'bleeding Kansas' served the anti-slavery politicians too well for them to join in any plan tending toward pacification" (page 128).

The close of his fight for the adoption of this just and wise measure marks the climax of Toombs's career as an *American* statesman. From this time on, he saw that it was vain to expect that the Republican party which was rapidly becoming predominant in the North would concede anything to southern interests. He, like most other southerners, now made up his mind that just so soon as that party should obtain

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control of the United States government, it would be high time for the slavery interests to seek safety in secession. Unlike others of his colleagues, however, he did not court that event. He opposed the movement, fathered by Buchanan and Jefferson Davis, to break down Douglas in the Democratic party, with which Toombs had affiliated since the disintegration of the Whigs after 1854. Though Toombs deprecated this movement, after the Charleston convention had been held, he endorsed what had been done there by the southern Democrats and advised against any concessions to the Douglas wing of the party. Seeing that the election of Lincoln was inevitable after the split in the Democratic party, Toombs became active in propagating secessionist doctrines, and was very influential in bringing the Georgia convention to take the fateful step.

Throughout the Civil War Toombs was an important figure in the government of the Confederate States. Professor Phillips shows the political reasons which brought about the election of Davis rather than that of Toombs and makes interesting comparisons between the qualities and capacities of the two which incline him to the belief that Toombs would probably have made a far superior president. The latter part of Toombs's career is, however, outside the scope of this review, which is concerned primarily with the work of Toombs and of Stevens in the councils of the nation, the rôle of the former in the drama of secession and that of the latter in reconstruction. We turn, therefore, to consider the principles and the sources of power of the man who was most influential in determining the fate of those who had taken part in this greatest of all rebellions.

Though Thaddeus Stevens had been a member of Congress from 1849 to 1851 and again entered that body in 1859, it was not until the outbreak of the Civil War that he became a figure of national importance. At the beginning of the secession movement, Stevens used all his talents to prevent the adoption of any of the proposed compromises. He spoke of the House Committee of Thirty-three as a "Committee on Incubation," and believed that the time for conciliation and compromise had passed. Stevens was one of the few men who at the beginning of the war believed that it would result in the abolition of slavery. He declared that the whole blame for the war rested upon the southerners, that the challenge was theirs, and that for his part he desired and indeed demanded that the slaves be immediately emancipated as a war measure. He never admitted that in waging war it was the purpose of the North not to interfere with the "domestic institutions" of the southern states. He was one of the four representatives

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who, in July of 1861, voted against the Crittenden resolutions which defined the object of the war as being solely for the preservation of the Union. Stevens was a bitter critic of Lincoln's "border state" policy and denounced the President for overruling military emancipation by Generals Fremont and Hunter in 1861 and 1862. He regretted the influence of border-state men on the President, and did all he could to have Blair ousted from the cabinet.

Stevens not only believed that the negroes should be freed, but thought that they should be armed and employed in the United States army. Just before Lincoln first enunciated his preliminary Emancipation Proclamation, Stevens said: "I no longer agree that this administration is pursuing a wise policy. Its policy should be to free the slaves, enlist and drill them, and set them to shooting their masters if they do not submit" (page 173).

However, it is Stevens's attitude on reconstruction which principally interests us here. As early as August, 1861, he had taken the ground that the people of the Confederate States were public, belligerent enemies, and that the nation in its efforts to overcome them was bound only by the laws of war and the law of nations. The Constitution was abrogated with respect to the hostile states that had rejected and repudiated it. Stevens adhered strictly to this principle throughout the war. When the war was over he was not disposed to regard the southern states as in the Union, but as "conquered provinces." This "conquered province" theory is too well known to require elaboration here. Suffice it to say that by it Stevens meant to show that Congress had full power to deal with the rebel states as it should see fit. The first duty of Congress was to declare the condition of these states and to fix a government for them. This government should not be military but territorial; for in territories Congress may fix the qualifications for voters. Voters should include all males over twenty-one years of age without regard to race or color who had not given aid to the rebellion. Under certain conditions and within certain restrictions the rebels might be allowed to participate in the government. In the territorial legislatures they would mingle with those to whom Congress should extend the franchise (i. e., the negroes), "and there learn the principles of freedom and democracy, and eat the fruits of foul rebellion." Let the rebel states remain in the position of territories until the loyal states had amended the Constitution as they should see fit. Stevens also maintained that the negroes should be given equal civil rights, and that something in a material way should be done for them. He thought that the confiscation of rebel lands ought to be a part of any plan of recon-

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struction, and though confiscation was the one thing that he did not succeed in accomplishing, so long as he lived he cherished it and never gave up hope that it might be carried out. The essentials of Stevens's plan of confiscation included the taking-over by the government of all plantations of more than one hundred and fifty acres, the giving of forty acres to each adult freedman, and the selling of the rest in small lots to the highest bidder. The funds received from this source were to be applied toward paying the national debt.

Such was in very brief outline the reconstruction policy of the man who, at the meeting of Congress in December, 1865, undertook the task of overthrowing the policy of President Johnson and having his own substituted therefor. It is not easy to explain how this radical man was able to bring all the elements of the Republican party in Congress to his support and keep them in line until the President was completely vanquished. Nevertheless many of the elements of Stevens's policy were adopted by men who, for the most part, were representatives of conservative interests. No doubt, the principal source of Stevens's great influence was his ability as a debater and his effective use of the party whip. But to understand why he became the virtual dictator of his party, it should be remembered that this was essentially a revolutionary era, when radical principles enunciated today, and existing only in the minds of extreme men, would be adopted tomorrow. Nearly every new measure which the government had adopted during the course of the war had been advocated in advance by Stevens. For instance, at the beginning of secession he had opposed making any further compromises with the slave power. In January, 1861, this was considered radical, while in January of 1866, there was no member of the Republican party who did not glory in the fact that no compromise had been made. When in the autumn of 1861 Stevens demanded that the slaves be emancipated as a war measure, most of the members of his party held back; and yet a year later this was done. When Stevens first advocated arming the slaves there were few who agreed with him, but long before the close of the war thousands of negroes were to be found in the army of the United States.

Is it any wonder, then, when so many radical measures had been adopted, and their adoption had proved popular, that he who was the great radical, should be looked upon as the natural leader of the Republican party? So it was that for better or for worse, for weal or for woe, the politicians of that party at the opening of 1866 were willing to follow Thaddeus Stevens almost anywhere he might lead; and this in spite of executive disapproval and consequent loss of patronage.

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It is not necessary to attempt to narrate again in this review the well-known history of reconstruction or to make an inquiry into the wisdom of Stevens's policies. We will do well to close our account of him with a quotation from his biographer's estimate of his public services and his character.

> There was, no doubt, nobility and greatness in Stevens' character. He brought to his country's service learning and eloquence, firmness of will, directness and tenacity of purpose, the noblest courage, and a fine and consuming scorn and contempt for evasion and hypocrisy and the low arts of the political tricksters. He was an unrelenting foe to every form of tyranny over the minds of men. He was a man of great mind and clear vision, to a degree quite rare among men, and, what is rarer still, he had the courage to assert his mind and to follow his vision. The time-server and the trimmer stepped aside to let him pass. Amid the greatest changes that ever occurred in any decade of our national life, facing the detraction of enemies, the timidity of friends, the corruption and tyranny of power, and the cowardice of party, he stood with Puritan and Spartan firmness for a definite end, the goal of equity and justice that had been fixed for him by his unwavering democratic faith [page 607].

To the reviewer this estimate seems just.

These two excellent biographies should be studied at the same time, for not yet has the history of the struggle over slavery, the destruction of the institution, and the consequent problems, been written by one man who could feel what both Toombs and Stevens felt. Those who would dismiss the whole subject by assuming the attitude of apparent fairness that before the war the North was right and the South wrong, while after the struggle the reverse of this was at least largely true, may yet find it necessary to revise their opinion. Until some one has written, who can understand the passion of Toombs for truth and the passion of Stevens for justice, the story of how the old South fought in the name of liberty must be told by a southerner. Likewise the story of how her conquerors fought also in the name of liberty, must be told by a man of the North.

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CARL SCHURZ[1]

THE *Reminiscences* of Carl Schurz have now been followed by six volumes of his letters, papers and speeches. Of these volumes, the first covers the period treated in the *Reminiscences*, volume ii and pages 1 to 310 of volume iii. The remaining five volumes contain the materials used by Mr. Bancroft and Mr. Dunning in the *Sketch of Carl Schurz's Political Career, 1869–1906*, which concludes volume iii of the *Reminiscences*, pages 311 to 455. The principles of his editing which Mr. Bancroft explains in the introduction are satisfying to the scholar, and appear to have been lived up to. Each volume contains an admirable calendar of its contents; and the few notes given are precisely those needed. The index, however, is of the most general character, and is incomplete, while the make-up of the volumes, while eminently pleasing and dignified, seems hardly heavy enough to withstand such usage as they may well receive from university undergraduates.

The speeches and political papers constitute about three-fifths of the whole contents. With the exception of one review of conditions in the South (IV, 368–400) written in 1885, twenty years after his first report of conditions there which furnished the groundwork of the argument in favor of the Republican program of 1866, and a fragment on McKinley (VI, 266–275), these have all been previously printed. No excuse need be given for their presentation in collected form. They make a really unique contribution to American history. From 1860 to 1904, either by speech or public letter, Carl Schurz expounded his views on every presidential election. Of one of these expositions he wrote Charles Francis Adams, January 1, 1899: "This speech is to serve the same purpose, namely to be a sort *vade mecum* for speakers or writers on our side of the question who will find in it answers, or at least suggestions for answers, to every argument brought forward on the other side." It is true that others sometimes guessed better than Schurz what the public were thinking; but for historical background, in spite of the fact that the early days of the republic were always invested for him with a somewhat too golden glow, for intellectual grasp

[1] Speeches, Correspondence and Political Papers of Carl Schurz. Selected and edited by Frederick Bancroft. Six volumes. New York, G. P. Putnam's Sons, 1913. xviii, 522; vii, 534; xiv, 508; xix, 528; xii, 531; xi, 496 pp.

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of the situation, for mastery of the essential issues, and for knowledge and unvarnished utterance of facts, he had no rival in his generation. His discussions were always high-toned, dealing with substance and not with personalities. James G. Blaine was the only man whose motives he attacked. Of Grant, whom he as earnestly opposed, he wrote (July 27, 1872): "He does not sit in his closet a designing usurper, gloomily pondering how he may subvert the free institution of the Republic. Neither does he ponder how he may preserve them. He does not ponder at all. He simply wants to carry a point" (II, 423). Schurz's speeches always became campaign documents. They were not only used by those who believed as he did, but received forced attention from those who did not; they are almost of themselves alone a political history of the period.

In addition to these periodic political pronunciamentos, the volumes contain speeches and series of speeches on a large variety of topics and occasions. Some of them were of great political significance; nearly all of them are of importance to the historian as being the clearest and frankest summaries of the situation to be found in the discussions of the day. Most important are those on reconstruction, between 1868 and 1876, on finance, during the seventies and nineties, on civil service reform from 1870 until Schurz's death, on Indian policy from 1875 to 1885, and on imperialism from 1899. Germane to the last subject was one of Schurz's best speeches on the annexation of San Domingo, delivered in the Senate, January 11, 1871. He discussed also "The Need of a Rational Forest Policy" in 1889, "International Arbitration" in 1896, and other subjects of national import, and made many historical addresses.

These pieces have a value wholly impersonal; they carry their merit on their face today; they would have been of weight at the time even if anonymous. To estimate their actual influence, however, it is necessary to know what Schurz's personality added to them. The correspondence serves in large measure to give their setting, while making a distinct contribution of its own. It includes letters to Schurz as well as from him, and is remarkable for the eminence and character of those taking part in it, but still more for the candor, without acerbity, of his own letters.

In their introduction, the memorial committee rightly group Schurz with Hamilton and Gallatin, as the three "greatest of the foreign-born statesmen of the country." It is a striking fact that in all three cases, an unusual precocity in attaining public distinction was followed by a sudden and final loss of popular influence at the age of about fifty.

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On March 25, 1855, at the age of twenty-six and after less than three years' residence in this country, Schurz wrote that he intended to enter our public life: "Although I do not regard the public affairs of this country with the same devotion as those of our old home." This is the last note of regret. Once in the fight, he became absolutely American. He was already full of confidence. On March 25, 1854, he wrote his wife from Washington:

> I feel that I might be able to do something worth while in this sphere, if once I had become actively and officially a part of it. . . . I do not think I am overestimating my value when I say that I would be second to very few here, not now, but in a few years.

Great and conspicuous as was Schurz's ability, it was not that alone which accounted for his rapid political rise. This was due still more to the position as leader of the German element which he soon acquired, partly because of his early leadership of the revolutionary movement in Germany, and partly because of his unusually rapid adjustment to American life. Entering local politics in Wisconsin, interest in the nativist movement soon drew him to Boston where he made friends among the reformer group who proved to be his most congenial associates. The campaign of 1860 found him established as the main reliance of the Republicans for winning to their side the Democratically-inclined German population. Schurz wrote Lincoln, May 22, 1860: "I was elected a member of the National Central Committee, and, as a matter of course, the 'foreign department,' if it may be so called, fell to my special charge." From this time until 1889 (except for 1880) and again in 1900 and 1904, his letters afford the best source for the study of the educational side of national campaigning as yet available to the historian. In 1860 with his fine intelligence fired by a great cause and fresh with the exuberance of youth he rose to the greatest height of oratory. He wrote his wife, July 25, that Lincoln after hearing him said: "You are an awful fellow! I understand your power now." His speech at St. Louis, August 1, was his greatest, and the best of the campaign. In this campaign and that for the Union immediately following, he did more to influence the course of American history than at any other time.

On November 10, 1860, he wrote to J. F. Potter that while he did not want an office unless the administration wished to give him one, he hoped that they would offer him nothing rather than a poor one. "First, I should like to be in a place where I can do something. . . . Secondly, as I am generally looked upon as the representative of the

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German element, I consider it due to those I do represent that I should not take an inferior place." Fully conscious of his position, he soon began a series of letters to the presidents and presidential candidates, which continued until his death, and which are remarkable for their directness, the general sanity of their advice, and their absence of a sense of humor. To every president from Lincoln to Roosevelt, except Arthur and Harrison, he tendered suggestions. These letters elicited many interesting replies. A discussion with Lincoln as to the cause of the Republican defeats in November, 1862 (I, 211–222), is suggestive. Still more so is one with Hayes in 1876 (III, 284–290) as to whether the "plain people" feared that a Democratic victory would bring Rebellion into power, or desired a change. Hayes urged a "hopeful tone." Perhaps the most interesting is one from Hayes, February 4, 1877, expressing his "anxiety to *do* something to promote the pacification of the South." The letters of Garfield, Cleveland and Roosevelt, while they exhibit a wish to conciliate Schurz, are more perfunctory; he had passed his zenith.

When in 1869 Schurz became senator from Missouri, he found behind him a new force added to the German element. The various men working for reform in the tariff, finance and civil service saw combined with his oratory and his special German backing a practical political sense which made him possible for leadership where Sumner was not. During and after the break with Grant, Schurz is in correspondence with all the reform leaders, Godkin, Bowles, Charles Francis Adams, Jr., Horace White, young Henry Cabot Lodge and many others. In their letters is the inner history of the movement. The climax of Schurz's political career is his speech on "The Aims of the Liberal Republican Movement," delivered on taking the chair as permanent president of their convention at Cincinnati, May 2, 1871 (II, 354–360), whither he brought his Germans and his reformers together for united action. No dramatist could have produced a more tragic contrast than does the simple chronology which places next in order Schurz's letter of May 6 to Horace Greeley expressing his chagrin and perturbation of spirit at the latter's nomination (II, 361–367)—the first letter of a correspondence of singular individuality.

On June 16, 1875, Charles Francis Adams, Jr., wrote Schurz of the nomination of Allen in Ohio: "The weapon with which to kill him is the German vote—it is the only effective weapon at hand, and you are its holder." Although Allen was "killed," it was already evident to more practical politicians that Adams's statement, as well as that of the memorial committee in the introduction to the volumes, that "he, above

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all others, personified that extraordinary stream of German immigration which enriched the United States in the years immediately following the Revolution of 1848," was but partially true. The very fact that he devoted himself to politics differentiated him from his generally unpolitical countrymen. His co-workers and associates were not Germans. He may be said to have personified the forty-eighters, the politically-moved immigrants; but they formed only a small minority of the voters of that nationality. Schurz no longer stood before the country as the representative of the whole.

He still maintained his leadership of the reformer group, powerful not so much because of its numbers as of its political mobility. Schurz believed that they had a still further element of strength. Godkin wrote him, June 28, 1872, (II, 386–387) of that "moral position which, when combined with such oratorical gifts as you have, gives a man an unshakable hold on the people and *forces* him on any party which wishes to succeed." That Schurz and many of the men with whom he was working did deserve and to some extent had such a "moral hold," is undeniable; but "moral hold" in this country has never been more than a break on the descent to Avernus unless accompanied by a representative spirit. It is this that our foreign-born have failed to grasp. Schurz, disappointed in the convention of 1872, wanted a meeting of "notables," men of standing "in the political and social world" (II, 377–378, to Godkin, May 20, 1873; III, 155–156, July 16, 1875, to W. M. Grosvenor). The meeting was held, and Schurz, while shrinking from appearing as president-maker, used its moral influence to secure the nomination of Charles Francis Adams or of Bristow by the Republicans in 1876.

Disappointed once more, Schurz nevertheless accepted Hayes heartily, and entered into confidential relations with him. In the disputed election he suggested reference to the Supreme Court (III, 339–348). A hasty comparison of the correspondence at this point with Rhodes's "Review of President Hayes' Administration," in his *Historical Essays* will show how much it will contribute to the future historian. Entering Hayes's cabinet in the Department of the Interior, he wrote that it was not a very interesting department to him as he had "never given much attention to the Indians, patents, pensions and public lands" (III, 399, February 19, 1877, to Murat Halstead). He got up those typically American subjects, but not in such a way as to compel attention. His letters and papers on Indian policy are interesting, but in his subsequent, and in many respects admirable, *Life of Henry Clay*, he does not mention public lands. His generalization

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that "a Senator belonging to the administration party is naturally not inclined to oppose the President" (III, 366–376, January 25, 1877, to Hayes) proved too optimistic. In 1884, after the nomination of Blaine, Schurz at once wrote to Bayard (IV, 205–208, June 28, 1884), and put himself in touch with the Democratic party, endeavoring to secure the nomination of Bayard or Cleveland. Bayard was anxious to have him in Cleveland's cabinet (IV, 291, November 17, 1884), but Schurz would not consider it (IV, 291–293, November 21), and Cleveland did not suggest it (IV, 358, March 2, 1885, to L. Q. C. Lamar).

In spite of Schurz's letters and support, Cleveland apparently did not heed him as much as previous presidents had done. To a mutual friend who asked Cleveland to regard Schurz as substantially a supporter, in spite of the fact that Schurz as representative of the Civil Service Reform Association had attacked some of the President's actions, Mr. Cleveland said: "Yes, but when am I to find three or four hours to answer his letter" (IV, 473). Nevertheless Schurz remained in correspondence with Bayard, and played a part in the Samoan Affair (V, 1–10, January 30, February 3, 1889).

As a supporter of sound money in 1896 Schurz was thrown in touch once more with the Republicans. On November 12, 1896, he wrote Mark Hanna that he did not want a cabinet position, that a cabinet should be homogeneous (V, 328–329). His correspondence with President McKinley on the civil service is interesting (V, 340–342, 296–398, 429–431), though its results were unsatisfactory to him; that on the war and imperialism (V, 457–458, 465-466, 472–477, 515–520) includes no response. In a fragment of an essay on McKinley (VI, 270–271) he speaks of a promise, as he understood it, made him by McKinley shortly after the latter's inauguration, that there should be "no jingo nonsense under my administration," and particularly no scheming for the annexation of Hawaii.

Though the note of friendship and family affection is often struck, the letters, as they appear, have no interest for the historian of culture, since the editor has omitted those which are primarily "personal, journalistic and military," and has made excision of occasional paragraphs in the letters printed. The ways and means of Schurz's life and his literary tastes are almost totally without illustration. Even his first impressions of America appear only in a few cases in the first part of the first volumes. The contribution is strictly political.

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REVIEWS.

The New Freedom: A Call for the Emancipation of the Generous Energies of a People. By WOODROW WILSON. New York, Doubleday, Page and Company, 1913.—viii, 294 pp.

A celebrated English statesman, when asked once upon a time what his religious faith was, sagely replied that wise men never defined their religion. This same statesman kept his friends and foes in such a state of uncertainty as to his political faith that the most nearly accurate characterization which could be devised for him was that of "Tory-Democrat." The long line of distinguished Americans who have held the office of president of the United States have been almost as cryptic in their politics. Previous to the publication of Mr. Wilson's *New Freedom*, there had been only one systematic treatise on politics and economics by a president. John Adams published, some years before his election to the presidency, his justly famous *Defence of the Constitutions of Government of the United States*. This indiscretion plagued him from the day of publication until the morning of March 4, 1801, when he retired to private life. Other presidents after Adams had written copiously and many of them had written books, but none had attempted to formulate his creed in political economy until Mr. Wilson.

Although this volume is composed of speeches made during the campaign and, therefore, bears the marks of addresses delivered to popular audiences, it is a fairly symmetrical work, and it unfolds a reasonably complete system of public economy. It was a thoughtless wit who brought against it the charge of "lucid ambiguity." There are, it is true, some ingeniously turned phrases that gleam with the same brightness from every angle, but running through it there is a system. And it is of high significance that Mr. Wilson saw fit to give it to the world. It is of still greater significance that we at last have a president who has dared to let his mind play freely around the central problem of American democracy: the distribution of wealth and opportunity.

But the results of his meditations are not new. Doubtless Mr. Wilson is well enough aware of the fact, for though his volume bears the title of the "new" freedom, he speaks everywhere of the "restoration" of politics to their full spiritual vigor and of the national life to its "pristine" strength. It is true he does not attempt to fix the date of our "pristine

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strength and freedom"; he does not tell us whether it was in the day of Mr. Cleveland's bond issues, of Crédit Mobilier, of the reign of slavocracy, or of the triumph of Jackson's wild-cat money hordes. But it is clear enough what he has in his mind: it is that day of *laissez faire*, long dreamed of by philosophers but never quite realized in any social order.

That philosophy, as everybody knows, was the philosophy of the reasonably successful middle class whose idol was Samuel Smiles and whose statesman was John Bright. Mr. Wilson is aware of the existence of a working class; the American Federation of Labor would hardly have permitted him to overlook this fact altogether. But his chief concern is the battle between great capitalists and the middle class in the United States, and his appeal is to the latter. His problem is how so to order the processes of industry that "your sons shall be able to look forward to becoming not employees, but heads of some small, it may be, but hopeful business, where their best energies shall be inspired by the knowledge that they are their own masters with the paths of the world before them." Whether he includes the daughters of the people to the number of the four or five millions in industry is not apparent.

The giant that blocks the path of those who would become their own masters is the "trust." Mr. Wilson will have none of that ambiguous classification into "good" and "bad" trusts. The trust is bad because it is the result of unfair practices, of the cowardly unwillingness of men to face competition like men. By unfair practices, the trust prevents our sons from becoming small and self-respecting business men and turns them into employees, into a state of non-freedom. Competition does not produce the trust. It may produce big business, but there is no danger from big business, because it is a sign of the ability of the owner to undersell his rivals efficiently.

The solution of the problem which Mr. Wilson sets before us is obvious: break up the trusts, legislate against unfair practices, define the rules of the business game in such a way that small men with small capital can play it, and then a thousand new doors of opportunity will be thrown open to our sons to escape from wage servitude into the ranks of business men.

To discuss adequately Mr. Wilson's system of politics would require a treatise on economics and politics. No such demand is ever made on reviewers of books. Whether they approve or condemn, scholars will find it refreshing to discover a president courageous enough to expound his system. Whether the exigencies of practical politics demand such frankness and such intelligibility, is, however, another matter.

CHARLES A. BEARD.

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The New Democracy. By WALTER E. WEYL. New York, The Macmillan Company, 1912.—viii, 870 pp.

"America to-day is in a somber, soul-questioning mood," says Dr. Weyl. ". . . To millions of men there has come a deep and bitter disillusionment." They wonder if the democratic experiment which began with so much promise has failed after all and yielded no better result than pretenses and hollow forms. The causes of this disillusionment are set forth by Dr. Weyl in a masterly analysis of the economic forces which shaped our social and political development in the nineteenth century.

Unlike so many of his fellow radicals he does not ask us to believe in the legend of a golden age. He speaks of the "shadow-democracy of 1776," and believes that the Constitution was drawn by men who had learned their trade, as Mr. Dooley would say, before the period of open plumbing. Democracy did come under Jackson, at least a form of democracy far in advance of European practice. Why then has Europe outdistanced us? Partly because we thought we had democracy, and ceased striving for it; partly because the slavery issue intervened; but chiefly because the force of the nation was spent in the stupendous task of conquering the continent. So vast was the land, we are told, so few the people, that taking, wasting and exploiting came naturally; there was bred a lawless, self-confident individualism which knew no allegiance and few obligations. No check whatever was placed upon competition, a warfare in which all was fair and in which every man was presumed to be capable of sustaining his own interests. Dr. Weyl describes these conditions in terms which recall the satire of Dickens. Pawkins' boarding-house, the Hon. Elijah Pogram and Hannibal Chollop who could "calc'late his distance to an inch," are explained and excused.

In the last thirty years of the century, however, from the completion of the first transcontinental railroad to the appearance of the trust system in its final outlines, a period of transition came. The public domain had been appropriated or despoiled. The pioneer found himself warned off the farms and cattle-ranges and mines; assailed with familiar weapons now wielded by powerful hands.

> The individualist became bewildered when his familiar rebating became double-cross rebating, and the big shipper received both his own and the little shipper's rebate, and he became still more confused when the big shipper ended rebates by acquiring his own railroads and his own pipe lines. The individualistic American was dumbfounded when he saw that

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favorable terminal facilities, public service franchises, and other special privileges, given to a competitor, had ended competition; when he saw competition become parasitic; when he saw the trusts organizing a fictitious competition against themselves. His psychological development had lagged decades behind the industrial development of the country.

Gradually the individualist changed his point of view. Seeing his own impotence, wishing to do collectively what he could not do alone, he turned to the state for protection; and then he came to see that the government, cramped and confined by the old *laissez-faire* doctrine, was hardly a match for the great corporations, that it had actually fallen under their domination. In a series of brilliant chapters, Dr. Weyl shows how the promoter and the financier established their control and how they set about the work of reorganization. They were receivers called in to take charge of the national assets. They brought to the task an analytical and objective spirit, methods of scientific precision. Of course, having vast power, they were subject to anti-democratic temptations.

But just at that juncture, when "our resplendent plutocracy" seemed to have established a firm control, the new democracy was born. Men and women were found "looking at America with new eyes, as though it were the morning of the first day." A new spirit began to manifest itself, emphasizing social rights, social rather than personal ethics, social rather than individual responsibility. It did not look back to the democracy of Jackson; for "the close of the merely expansive period of America showed that an individualistic democracy must end in its own negation, the subjection of the individual to an economically privileged class." How the new spirit was propagated and what prospect it has of growth and permanence, Dr. Weyl recounts in the second half of the book, devoting the last chapters to a fairly detailed examination of the social, political and industrial programs of the democracy.

There is nothing very novel about the views which Dr. Weyl presents; most of them have appeared somewhere else before. But they are well worth presenting anew. Drawing from many and varied sources and displaying an impressive control over recent literature, Dr. Weyl has done valuable service in giving coherence to scattered materials and interpreting them with real insight. A sustained brilliance of style, a felicity of expression and an aptness in selecting images mark him as a man of rare literary gifts. The book is one which will stimulate thought and inspire confidence in the future of American institutions.

E. M. Sait.

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The Theory of Social Revolutions. By BROOKS ADAMS. New York, The Macmillan Company, 1913.—vii, 240 pp.

The thesis of Mr. Adams is that the exercise of political functions by the judiciary endangers the stability of society in the United States. In the opening chapter, entitled "The Collapse of Capitalistic Government," the author states that the equilibrium of society in the United States is rapidly shifting. The capitalistic class, which has for some time been exercising a number of important sovereign powers, faces an approaching change of environment which must alter its social status. It must soon accept a position of equality before the law. The numerical majority, who are inimical to capital, will seek to acquire autocratic authority by obtainining an absolute mastery over those "political tribunals which we call courts." The relation of the courts to politics is therefore the fundamental problem which the American people must solve, before any stable social equilibrium can be attained.

Succeeding chapters present striking instances of action by the American judiciary which the author characterizes as legislative in nature. The most important of these is the invention of the theory of the police power, whereby the judiciary has acquired a prerogative to suspend constitutional limitations on legislative action—"a supreme function which can only be compared to the Dispensing Power claimed by the Stuarts, or to the authority which, according to the Council of Constance, inheres in the Church, to 'grant indulgences for reasonable cause.'" In deciding what is a valid use of the police power, the courts are said to vote upon the question of reasonableness, like any old-fashioned town meeting. "There is no rule of law involved. There is only opinion or prejudice, or pecuniary interest. The judges frankly admit that this is so. They avow that they try to weigh public opinion as well as they can and then vote." Other instances of legislative action by the judiciary are found in decisions interpreting the clause which forbids impairing the obligation of contracts, in the Dred Scott case, in the legal-tender and income-tax decisions, and in the invention of the "rule of reason" in the Standard Oil case.

It seems manifest that when a constitution or a statute has two possible meanings, the courts will be influenced by considerations of policy in deciding which meaning to select. They will try to think what the legislature would have thought, had the concrete issue been present in their minds. And inevitably they will be governed largely by what they as legislators would have thought. The frequency of the possibility of either of two conflicting interpretations is amply demonstrated by the

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prevalence of dissenting opinions. It does not aid us greatly to call this function of interpretation a legislative or a political one. It is, at any rate, a function which cannot be exercised by a legislative body in advance of the particular controversies which arise between litigants. Constitutions and statutes must of necessity be couched in general terms. The innumerable concrete situations to which those terms must be applied cannot be foreseen. It was in 1717 that Bishop Hoadley wrote: "Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the law-giver, to all intents and purposes, and not the person who first wrote or spoke them." It must be recognized, however, that this "law-giving" power is subject in a measure to the control of the power which may amend the original formulation. In the case of state constitutions, at any rate, this consideration is far from negligible.

Mr. Adams does not tell us how we are to withdraw all political functions from the judiciary. It is not clear that he means to advise us to do so. He would evidently take away the power to act as "censors of legislation," since he states that "the province of a censorial court is to dislocate any comprehensive body of legislation, whose effect would be to change the social status." That the removal of constitutional limitations on legislative action or the denial to the judiciary of the power to enforce such limitations would not solve the entire difficulty is apparent from one of the striking instances of legislative action on the part of the judiciary which Mr. Adams adduces. The "rule of reason" doctrine of the Standard Oil decision was employed to aid in interpreting a statute, to discover what the legislature meant, not to deny to the legislature any powers which it claimed.

It is of course beyond debate that the removal of all constitutional restraints on legislation would greatly limit the political functions now exercised by the courts. It would seem that the wisdom of such a step could best be discerned from a careful comparison of the results of the American system with those of the English system. The interest of Mr. Adams, however, runs along more theoretical lines. In the course of two chapters dealing with the military and political history of the French Revolution, he shows that the use of the courts for political purposes by a dominant faction was fatal to the court and to the dominant faction, when that faction lost control. He concedes that it is vain to look in the future for some paraphrase of the past; yet on the basis of his initial assumption (pages 6, 7, 203) that society is an organism operating on mechanical principles, he holds that this history may teach us principles by which we may more intelligently view the social phenomena

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about us. His conclusion from history is that the exercise of political functions by the judiciary tends to keep an old order in the saddle long after the facts require a change. It follows that instead of a gradual readjustment we have a postponed cataclysm. Thus order is disturbed and civilization, which is based on order, is endangered. "Courts . . . cannot control nature, though by trying to do so they may, like the Parliament of Paris, create a friction which shall induce an appalling catastrophe."

The closing chapter contains some wholesome advice to the capitalist class to see the facts and not to rely too strongly on their present control of a political court. "In the advent of adverse fortune . . . the position of capitalists would hardly be improved by the existence of political courts serving a malevolent majority." The experience of the southern slaveholders is adduced as a warning to the capitalist who is said to be destined in the near future to be subjected to a pressure under which he must develop flexibility or be eliminated. Capitalists, observes the author shrewdly, think with specialized minds. This specialization causes that obtuseness of perception which has been their ruin when the environment which favored them has changed. In altering the capitalist psychology, Mr. Adams evidently does not look for aid from the legal profession. While the capitalist, he says, regards the constitutional form of government which exists in the United States, as a convenient method of obtaining his own way against a majority, the lawyer has learned to worship it as a fetich. In a vein which is not to be taken as characteristic of his whole volume, he adds:

> Nor is this astonishing, for, were written constitutions suppressed, he would lose most of his importance and much of his income. Quite honestly, therefore, the American lawyer has come to believe that a sheet of paper soiled with printer's ink and interpreted by a half-a-dozen elderly gentlemen snugly dozing in armchairs, has some inherent and marvelous virtue by which it can arrest the march of omnipotent Nature.

It is perhaps unfair to Mr. Adams that his book should be reviewed by a lawyer. As its title indicates, it is a study in theory. It is designed to indicate tendencies and to point out dangers, not to make and elaborate proposals for specific remedies. The author paints with a large brush. With rare exceptions he writes in good humor, and as an observer, without beclouding bias. His thoughts are suggestive and stimulating. Many may well heed his warning that political control of any kind is an ephemeral thing, and that weapons are often wielded against those who fashioned them.

THOMAS REED POWELL.

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The American Doctrine of Judicial Supremacy. By CHARLES GROVE HAINES. New York, The Macmillan Company, 1914.—xviii, 365 pp.

In this volume, dealing with the origin and development of that doctrine of American constitutional law which asserts the competence of the judiciary to refuse to enforce legislative acts that are held to be in controversion of constitutional provisions, it cannot be said that Professor Haines has made exploration into a new field of historico-legal research. This purpose, indeed, he frankly disavows, being well acquainted with, and making generous use of, the more or less specialized studies which others have made in the same field. Neither can it be said that the volume offers much that is new in point of view or in conclusion, although in some instances the bases of conclusions already formulated by others have been broadened and strengthened by the presentation of additional evidence.

In spite of these very obvious facts—of which no one is more cognizant than the author himself—this work is both timely and valuable. It is timely because it deals with an aspect of judicial functioning which has been prominently before the American people in recent years, and which has resulted in the publication within these years of a number of essays and books that reveal a pathetically limited knowledge of historical facts or of the commentaries which careful students have made upon the foundation of some of these facts. It is valuable because it brings together in a single volume of moderate compass a complete discussion of the rise and development of what is, from an institutional point of view, manifestly the most important doctrine of our constitutional law. This discussion is complete, however, not in the sense that it is exhaustive but in the sense that it deals in a scholarly and admirably temperate manner with every phase of the somewhat controversial subject under review and presents at every point sufficient historical evidence, drawn in part from the author's own researches and in part from the authoritative researches of others, to make the analyses and conclusions for the most part wholly convincing. Both the general reader and the busy student must regard such a work as a distinct contribution to the literature of American legal history.

The thesis sustained by the author may be outlined as follows: As applied by the state courts, the doctrine of judicial supremacy, "emerging from a notion of an overruling law of nature or law of God, through a concept of a law fundamental and unalterable which was vitalized by Coke's theory of the supremacy of common law courts" (page 60),

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was "by a slow and almost imperceptible development" transformed "through a long line of colonial and state precedents into a well-defined principle of judicial practice" (page 120). As bearing upon the introduction of the doctrine into the national system, it appears that although the interest of the convention of 1787 "centered principally on the question of a Council of Revision such as that in operation in New York" (page 143), "the lack of any express grant to declare laws invalid is far from conclusive evidence that this power was to be withheld from the federal judiciary" (page 147). Almost immediately the federal courts began to exercise the power in question (pages 158–171). While certain restrictions upon the exercise of such power were laid down from the beginning (chapter viii); while there were numerous instances of opposition to the practice of judicial supremacy before 1830 (chapters ix and x); and while there was a decided change in the attitude of the Supreme Court upon this subject with advent of Taney as chief justice; yet when the strain upon that tribunal that developed out of the seething politics of ante-bellum, bellum, and post-bellum periods had been relieved, the period from 1870 to 1890 was "characterized by a return to a condition somewhat similar to that from 1789 to 1825 when devices to limit legislative power were popular" (page 284). Down to this point there is little to question in the author's admirable development of the doctrine of judicial control, although there are occasional historical inaccuracies, such as the apparently unquestioning acceptance of the long-disproved contention of Jefferson and the Anti-Federalists to the effect that the Federalists had in the dying hour of their administration in 1801 reorganized the judicial system "with the sole object of appointing to the new places justices in sympathy with Federalist principles" (page 213).

The portion of Professor Haines's work which most invites criticism is his discussion of the "extension of the scope of judicial review after 1870" (chapter xiii). No one can deny that in the exercise of the authority to declare statutes void, American courts, both state and national, have given voice to many utterances concerning the "spirit of the Constitution," and such vague and indefinable principles as those of "natural justice" or of "free republican governments." But it should not be inferred that the courts have established many rules of law for the invalidation of statutes upon nothing more substantial than "general principles." It is highly questionable whether it may be said that "the theory of Justice Chase" in Calder *v.* Bull, which was concurred in by no other member of the court, "soon received judicial sanction in the states and was eventually made the basis of a very effective control over

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the general policy of state legislation" (page 290). The liberality of view expressed by James Kent as to the competence of the judiciary in this regard is, of course, a matter of historical record. But his opinion in the well known case of Dash *v.* Van Kleeck, quoted in part by the author, was concurred in by no other justice, while his opinion in Gardner *v.* Newburgh (2 Johns. Ch. 162), cited by the author by indirection, is of doubtful force, since it was applied by the learned jurist only to the extent of reading into the law something which he held to have been "unintentionally" omitted by the legislature. It is difficult also to follow the author when he declares in effect that these views of Kent respecting the authority of the courts to invalidate statutes upon general principles "developed" into the rule that "statutes in derogation of the common law are to be strictly construed" (page 291)—a rule which in the next breath the author wholly transforms by referring to it as a "theory developing in the state courts that certain classes of statutes were to be deemed void as in derogation of the common law." Strict construction and voidance of statutes are surely not interchangeable terms.

Professor Haines's citation of the Loan Association case as an instance in which the Supreme Court held a state action void upon "general principles" is eminently proper. He would doubtless have been justified also in asserting that the rule of law applied in that case—to wit that the power of taxation may not be exercised for other than a public purpose—is perhaps the only general and important rule of our constitutional law that has been rested upon the "doctrine" of general principles. But considering the fact that no federal question was involved in the Loan Association case or in subsequent cases affirming that decision, the author seems scarcely justified in discussing that case under the caption "Fourteenth Amendment construed into an Effective Check on State Legislative Power" (see also page 304) or in treating it *en route* between Munn *v.* Illinois and Chicago, Milwaukee and St. Paul Railway Co. *v.* Minnesota.

Indeed, in spite of the foolishly unguarded utterances of many of our judges, past and present, and in spite of the obvious fact that the contract clause, the commerce clause, and the due-process-of-law clause, as construed by the courts, have given rise to "a most effective supervisory control over state legislation in the realm of individual privileges and property," it is highly questionable whether the "doctrine" of general principles should be placed in the same category. In the one case the Constitution itself contains vague clauses which *must*, under our system of judicial control, be construed and defined by the courts. We may

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disagree with the courts' construction, but while we permit the system to perdure we cannot deny either their authority or their duty to construe. In the other case, the courts have gone out of their way to interfere with policies of legislation, and their authority to do so is of an exceedingly doubtful character. Fortunately, however, in spite of the frequency with which the courts make rhetorical excursion into the apparently irresistible realm of general principles, the actual practice of declaring statutes void upon this basis has not been nearly so extended as Professor Haines seems to imply, being in plain point of fact confined almost wholly to the establishment of the rule of law mentioned above, that the power of taxation may not be used for other than a public purpose.

HOWARD LEE MCBAIN.

The Validity of Rate Regulations, State and Federal. By ROBERT P. REEDER. Philadelphia, T. & J. W. Johnson.—1914; xv, 449 pp.

The three most important subjects treated in this book are "The Distribution of Governmental Powers," "The Due-Process Clause" and "Just Compensation." On the first of these subjects the author shows convincingly enough that when a statute is no more definite than to require a commission to establish "reasonable" rates, it confers legislative power upon that commission. His conclusion, however, by no means follows, that such a statute (the Interstate Commerce Act, for instance—section 48) is unconstitutional. The author himself recognizes (note 31, on pages 64–65) the insecure basis of the court-made rule that legislative power can not be delegated, and the inconsistency of the decisions under the doctrine. While the Supreme Court has not formally renounced its assertion of this rule, it has nevertheless often upheld delegations of power not a bit less "legislative" in character than the power of determining what rates are reasonable, upholding such delegations by the fiction that the power was not legislative. It is manifest that government could scarcely go on without this delegation of legislative power.

The chapters on the due-process clause are the best in the book. The author makes a keen analysis of the decisions of the Supreme Court and of the historical meaning of the words, coming to the conclusion that the court is wrong in thinking that the due-process clause of the Fourteenth Amendment gave it any jurisdiction over statutes passed by state legislatures. Legislatures are not properly restrained thereby, contends the

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author, from so altering the law of the land that some persons may be deprived of life, liberty or property, for such deprivation would be in accordance with the altered law of the land and therefore *with* due process of law. The restraint is on the executive and judicial organs of state governments (sections 73, 82, 83). The provision applies not to the making, but "merely to the manner of enforcing" governmental commands (section 61).

The author's discussion may seem futile to those whose only interest in constitutional law is the advocate's practical interest of knowing what arguments are likely to prove effective with the court. But to students of political science, seeking enlightenment as to the beneficence of the practical workings of our system of judicial control over legislation, it is of great interest. It is especially illuminating in exposing the absurdity of the contention that when the Supreme Court declares legislation to be unconstitutional it is merely following the mandate given it by the people in their soberer moods when framing the Constitution and its amendments. It should also be of interest to those lawyers who anticipate that the Supreme Court may some day adopt the view that the Constitution requires the judges to hold a statute valid if in their judgment it is not inconsistent with the Constitution, even though it is inconsistent with some prior judicial interpretation. So long as the court clings to the doctrine of *stare decisis* in deciding questions of constitutionality, it must disregard its own views of the meaning of the Constitution whenever those views are not in harmony with the precedents. Thus, through the use of *stare decisis*, the precedents, however erroneous they may now seem, have displaced the Constitution as the standard to be followed. It can at present be restored to supremacy only through the cumbersome process of amendment which can be blocked by one-fourth of the states, and those, the least populous. The supremacy of the Constitution could be restored by the court itself, whenever convinced of the error of a previous judicial interpretation, if it would confine the doctrine of *stare decisis* to branches of the law where its application does not involve disobedience to the court's own more recent understanding of the Constitution. As soon as the court chooses thus to obey the Constitution, in the light of its own best judgment as to the meaning of the instrument, discussions such as Mr. Reeder's on the correct interpretation of the due-process clause will no longer seem to lawyers "impractical" because at variance with the precedents.

For the purposes of the chapter on "Just Compensation" the author accepts the proposition that the federal courts have jurisdiction to consider the merits of state legislation which may be confiscatory, a juris-

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diction conferred either by the due-process clause or perhaps with "far more propriety" (section 146) by the equal-protection clause of the Fourteenth Amendment. To this latter clause he devotes a brief separate chapter. He then discusses what constitutes just compensation. The company should be left with some return (at what rate he discusses later) on the value of its property at the time of the service rendered (section 155). The argument for this basis is as follows:

> If the government appropriated that property the extent of its duty would be to pay for the value which the property possessed at the time of the appropriation; and in deciding whether a rate regulation is an appropriation *pro tanto* the value of the property certainly ought to be estimated upon the same basis [section 156].

If this means anything, it means that any uncompensated appropriation, reasonable or unreasonable, is invalid, that the rate of return which must be allowed is the rate sufficient to keep the market value where it is, and that any governmental action making it worth less to its owner is an uncompensated appropriation. Inasmuch as any reduction of net earnings makes the property worth less to its owner, it follows that any reduction of net earnings would be unconstitutional. But neither the Supreme Court nor Mr. Reeder accepts this conclusion. Mr. Reeder tries to escape by saying that the "value" which he has in mind can not in any way depend upon earning capacity (section 162), and that it "seems to be the cost of producing at the present time property which is its equal in efficiency," minus depreciation, unused property etc. (section 157). The difficulty with this solution is that if a reduction of net earnings to the point where they yield "the constitutional rate of return" (section 179) on this "cost of producing, etc.," is permissible, we cannot forbid a further reduction *solely on the ground that it constitutes an appropriation of property;* for the permissible sort of reduction is likewise an "appropriation." If the further reduction is unconstitutional it must be because it is that particular sort of appropriation of property which seems to the court "unreasonable" or "unjust." If the unreasonableness or injustice of the reduction constitutes the criterion, the Supreme Court in passing upon the validity of rate regulations is performing the legislative function of determining a policy. To convince one of the soundness of the basis which it adopts, it must use arguments of public policy or of justice; which neither it nor the author of this book attempts to do. That is why the discussions of both author and court are confused and unsatisfactory.

It does not help to say that the company's right to a reasonable re-

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turn is dependent on the right of the public to be served at a rate no higher than the value of the services, as the author (following some dicta of the Supreme Court) suggests in section 177. If by "value of the services" is meant the utility to individual users, there will always be some to whom the services will not be worth the price asked, however low it may be, and they will not buy; there will be others to whom the services will be worth more than they have to pay; and it would be absurd to look for the utility of the services to the "average" purchaser. If on the other hand "value of services" is used in the sense of exchange value, then the price cannot in the nature of things exceed the value, for if a high price is asked (and obtained) it must be because the supply is sufficiently limited to give the service a value equal to that price. This does not justify any price which the company may fix, for the essence of the complaint of extortion against unregulated monopolies is that they have the power to limit supply and thus to increase exchange value and the price of their products or services; and this complaint is not answered by saying that the price is no higher than the exchange value.

The author's discussion of "Just Compensation" gives a fairly accurate idea of the course of the decisions of the Supreme Court, though it is difficult to be accurate in describing anything so vague and shifting as the views of the court on this question. It is doubtful whether the Supreme Court is so definitely committed to the cost-of-reproduction-less-depreciation theory as is the author; for it still quotes in its decisions the well-known statement of Justice Harlan in Smyth *v.* Ames, 169 U. S., 466, 546 (criticized by the author in section 168), to the effect that several things besides "the present as compared with the original cost of construction" are "matters for consideration, and are to be given such weight as may be just and right in each case." This leaves a convenient loop-hole for escape whenever the results of the application of the cost-of-reproduction-less-depreciation rule may seem too unpleasant.

In addition to the chapters already commented upon, there are also chapters on "The Commerce Clause", "The Impairment of Contracts," "Preferences to Ports," and "Limitations upon Federal Judicial Power." But the author's real contribution is his admirable discussion of the due-process clause. It is to be regretted that he did not devote equally satisfactory consideration to the question of the reasonableness of the return.

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Canada's Federal System: Being a Treatise on Canadian Constitutional Law under the British North America Act. By A. H. F. LEFROY. Toronto, Carswell Company, Limited, 1913.—lxviii, 898 pp.

Mr. Lefroy's treatise on the federal system of Canada is peculiarly timely in view of the fact that preparations are already making in the Dominion to celebrate in 1917 the first half-century of Confederation. In his introductory pages, Mr. Lefroy advances seventy leading constitutional propositions; and in the course of his thirty chapters—admirably arranged and clearly written—he makes good these propositions from the British North America Act, from the cases arising under it which have gone to the courts or to the Judicial Committee of the Privy Council, and from precedents which have been established at Ottawa and at Whitehall in connection with the Act during the forty-six years that it has been in operation. He not only presents the law as it is today, but furnishes its historical background.

As Mr. Lefroy shows, it is now pretty well established that the British North America Act is the sole charter by which the rights claimed by the Dominion and the Provinces can be determined. Although the Act was founded upon the Quebec Resolutions of 1864 and must consequently be accepted as embodying a treaty of union between the provinces, yet when once enacted it constituted a wholly new point of departure, and established the Dominion and provincial governments with definite powers and duties, both alike derived from the Act as their source. The state of legislation and the legislative powers exercised in the United Provinces of Quebec and Ontario, and by Nova Scotia, New Brunswick and Prince Edward Island before Confederation can accordingly at most only be usefully referred to in order to throw light upon the language of the Act of the Parliament at Westminster when that language is doubtful. But the Act of 1867 is after all a statute; and courts of law must treat its provisions by the same methods of construction and exposition which they apply to other statutes, no matter how great the constitutional importance of the questions which may be raised.

For a short period in the history of the Dominion, the British North America Act had its critics. There are still Canadians who see little usefulness in the Senate as it was created in the Act. Otherwise there is today little or no adverse criticism of the British North America Act; and Mr. Lefroy is not singular in his whole-hearted admiration of the constitutional machinery by which the Dominion is linked to the

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mother country and by which the government of the Dominion is carried on. He takes pride in the fact that the federal system of Canada is a living system, so wisely devised that it is free to expand and develop in harmony with the national growth. He notes all these developments; as, for example, when he is tracing the present-day attitude of the government at Ottawa towards the enactments of the provincial legislatures, as compared with its attitude towards this legislation in the early days of Confederation. Then the Dominion executive was imbued with the notion that the relation between the Dominion and the provinces was analogous to that existing between parent and child, and acted accordingly. Provincial enactments are still occasionally disallowed. Perhaps no province has had more laws disallowed than has British Columbia, where there have been so many attempts to discriminate against the Chinese and the Japanese. But the earlier view at Ottawa of the status of the provinces has been overthrown by a series of decisions by the Judicial Committee of the Privy Council which have clearly established that the provinces acting within the scope of their powers are almost sovereign states, and that they are entitled to exercise all the prerogatives of the Crown not conferred on the Dominion.

Again when Mr. Lefroy puts on record the fact that the paramount authority of the Imperial Parliament was in no wise lessened by the granting of the Constitution of 1867, he notes, and apparently with satisfaction, that while the United Kingdom has reserved to itself the power to disallow any legislation which it is in the power of the oversea Dominions to pass, it has—as Sir Wilfred Laurier reminded the Imperial Conference of 1911—"been very chary of exercising that power except in the matter of shipping, whereon it has always maintained the doctrine that it has the power to supervise the legislation passed by the self-governing Dominions."

From the point of view of students of constitutional development in Canada Mr. Lefroy's book is of much value as a work of reference. Its arrangement is excellent. There is an appendix in which are embodied the British North America Act and all the legislation and orders-in-council at Westminster and Ottawa of constitutional import enacted or promulgated since 1867; and in addition to a table of contents, which extends to fifteen pages, there is a general index of twenty-one pages.

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History of Canadian Wealth. By GUSTAVUS MYERS. Volume i. Chicago, Charles H. Kerr and Company, 1914.—vi, 337 pp.

It has often been stated in Canada—and stated without denial—that less than fifty men control more than one-third of the Dominion's material wealth, as expressed in railways, steamship lines, banks, factories and coal mines. It is apparently the aim of Mr. Myers in this volume to show to what extent this concentration of wealth has been brought about through corrupt politics, or at any rate by means of political influence. The first half of the book is concerned with the conditions under which wealth accrued to the Hudson's Bay Company and the ecclesiastical organizations, chiefly of the Province of Quebec. Neither the provincial legislatures, as they existed before Confederation, nor the Dominion Parliament as it has existed since 1867, had much to do with the enrichment of the Hudson's Bay Company, or the long-established ecclesiastical organizations of the old French province. But the same cannot be said of the wealth that since the union of the provinces of Ontario and Quebec in 1841 has accrued to dealers in politics, to jobbers in bank charters, to promoters of railways, to railway and government contractors, and to the promoters of mining and industrial enterprises which have benefited from the protection of the tariff and bounty laws in operation since 1858. With respect to all this, reckless or corrupt politics at Ottawa, and at some of the provincial capitals, have undoubtedly had their part, a part that is one of the most conspicuous facts in the history of Canada.

Mr. Myers's work is to be in two volumes. In the first volume he carries the story down only to 1891—the year in which the Langevin-McGreevy scandal startled and dismayed England, almost as much as did the Macdonald-Allan scandal of 1872–1873, over the contract for the Canadian Pacific Railway which brought about the downfall of Sir John Macdonald and the Conservatives at the general election in 1874. Mr. Myers has yet to treat of the protectionist and bounty legislation of the years from 1858 to 1910, and also of the political exploitation of the land, mining and forest resources of Canada that are controlled by the Dominion government, which went on during the Laurier administration from 1896 to 1911. It is a sordid story that Mr. Myers unfolds in his first volume—sordid almost to the degree of being sickening. But there is little in it that is new to students of Canadian political history since 1841; and with parliamentary documents of one kind or another, and court records to support him, Mr. Myers seldom

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makes a statement for which he does not cite an accepted authority. One exception may be noted. More authority than a mere statement in a volume of reminiscences seems to be necessary to justify the resurrection of a rumor current in 1854, that Elgin, who was governor-general at that time paid off £80,000 of mortgages on his Scottish estates out of the proceeds of speculations which he had shared with Francis Hincks, who was minister of finance in the Hincks-Morin administration of 1851–1854.

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Recollections of Sixty Years. By SIR CHARLES TUPPER. New York, Funk and Wagnalls Company, 1914.—vii, 414 pp.

This volume contains eight photographs of the author—a fact that at once indicates the outstanding characteristic of the "Recollections." It is frankly and aboundingly egoistical. It is, moreover, quite as frankly partisan. And it is almost as frankly pagan. For the stories of intrigue and political scandal are told as though they were things that did not matter, as though ethical standards the world over count for as little as they seem to have counted at Ottawa during the thirty-four or thirty-five years in which Sir Charles Tupper was active in Dominion politics. None the less, and largely because of these three characteristics, the "Recollections" is of more interest, and from some points of view of more value, than any other biography or autobiography of a Canadian statesman that has yet been published.

The book is valuable because of the light it throws on political conditions in Nova Scotia and the Maritime Provinces from the opening of Queen Victoria's reign to Confederation in 1867; because of its revelations of the circumstances attending the acceptance of Confederation in Nova Scotia and the collapse of the movement against it led by Joseph Howe; and because of the insight it gives into Dominion politics from 1867 until 1901, when Sir Charles Tupper retired from the leadership of what was then the Conservative opposition. One of the most informing chapters is that devoted to a lecture which Sir Charles delivered in 1860, on the "Political Condition of British North America." As a description of conditions existing in the Provinces at that time this lecture is almost as interesting as the Earl of Durham's Report; and it would be difficult to name anything in print which describes better the conditions in the Maritime Provinces between 1840 and 1867.

As a contribution to the history of Confederation, the chief value of

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the "Recollections" lies in the story of the methods by which Howe was induced to abandon the leadership of the popular movement in Nova Scotia against Confederation and to take service with Sir John A. Macdonald in the Dominion cabinet at Ottawa. Sir Charles Tupper was Macdonald's agent in this matter, and he tells the story of his success with Howe with evident satisfaction. After Confederation, in the period from 1870 to 1901, the interest of the book centers chiefly in what Sir Charles writes concerning the Canadian Pacific Railway scandal of 1872; the adoption of the National Policy by Macdonald and the Conservatives in 1879; the building of the Canadian Pacific in the years from 1880 to 1886; the Langevin scandal of 1891; the trouble over the Manitoba school question between 1893 and 1896; the defeat of the Conservatives in 1896; and the conversion of the Liberal party at Ottawa to protection and the National Policy as evidenced by the tariff revision of 1897.

The author is sometimes incorrect in his dates, as for instance when writing of the beginning of the bounty policy in 1883, and again when dealing with Sir Mackenzie Bowell's attitude on the Manitoba school question during his premiership in 1894–95. Sometimes he does not tell the whole story. For instance when he is describing his part in committing the Dominion to the policy of bounties for the iron and steel industry—a policy that has cost Canada $17,000,000—he makes no mention of the motive for this extension of the National Policy, which was that an iron company with a furnace at Londonderry, Nova Scotia, then the only coke furnace in the Dominion, was in the hands of a receiver. Or again when he is complaining that the Earl of Aberdeen, governor-general at Ottawa, "in defiance of constitutional procedure," withheld his assent from the contract for a fast line of steamers between Great Britain and the Dominion, he makes no mention of the facts that the Parliament had been continued longer than the usual term, and that the Conservative government was notoriously exhausted and discredited, and was already in sight of the defeat at the polls that came in June, 1896.

Despite these drawbacks, that are easily overlooked in the case of a man of ninety-two who is dictating his Reminiscences, the book is of much value as a contribution to the history of the British North American Provinces and of the Dominion, if for no other reason, than that it carries the aroma of politics at Ottawa in the period during which Macdonald was supreme.

EDWARD PORRITT.

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A History of University Reform from 1800 to the Present Time with Suggestions towards a Complete Scheme for the University of Cambridge. By A. I. TILLYARD. Cambridge, W. Heffer and Sons, Limited., 1913.—xvi, 392 pp.

It is almost impossible to treat the subject of the older English universities without some review of the manner in which they came into existence. Hence, although Mr. Tillyard gives the date 1800 as the beginning of his history of University Reform, he gives in his introductory chapter a brief sketch of the history and purposes of the universities before the foundation of the colleges; of the origin of the collegiate system; and of the gradual supplanting, so far as wealth, power and importance are concerned, of the universities by the colleges. This reversal of the original relations, Mr. Tillyard regards as a natural growth, dating from the foundation of the first colleges—Merton at Oxford in 1270, and Peterhouse at Cambridge in 1284. It was not until after the Reformation, however, that the colleges were entrenched in their position of advantage by law. The statutes passed under Queen Elizabeth, James I and Charles I for the purpose of securing the adhesion of the universities to the new state church, subverted the constitution of the university, and vested the authority in the Board of Heads of Houses. The colleges practically became the university, absorbing the educational and literary functions of the older institution, without its advantage of unity. All students had to become members of a college, and between 1650 and 1800, as a result of public indifference and of an evil constitution, Oxford and Cambridge lost all their older prestige and became almost useless as organs of national education. To quote Mr. Tillyard:

> A period of lethargy set in, during which Oxford fell to almost incredible depths. The old examination system had become obsolete, and nothing had been put in its place. Wenedorn, who traveled through England before 1788, gives an amusing account of what he saw. The Presiding Examiner, the Respondent or candidate for a degree, and the three Opponents came into the schools, and amid profound silence passed the statutory time in the study of a novel or other entertaining work. Oxford in fact gave its degrees without any examination to all who had paid their fees and kept the required number of terms. Cambridge was saved from falling quite so low by the influence of Sir Isaac Newton and his successors. It required a certain amount of mathematics before granting a degree.

This low point was reached in the eighteenth century, and it is the task of Mr. Tillyard to show how far the universities have now either

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reformed themselves or been reformed by law, and what still remains to be done to obtain the highest degree of efficiency from these national institutions. The first necessity for reform is criticism, for there can be no reform until it is known what faults exist, and until there is some agreement on the best method of correcting them. From this point of view Oxford and Cambridge owe much to the *Edinburgh Review*, which between 1800 and 1810 published articles by Professor Playfair, Lord Jeffrey and Sydney Smith, criticizing the education given at the English universities. The criticism, which was ably answered by Dr. Copleston who made the best case possible for the universities, was taken up again in 1831 by Sir William Hamilton, and it was the scathing analysis of the abuses that had crept into the system—or lack of system—of the colleges of Oxford and Cambridge that led to the gradual introduction of measures of reform from within and to the passing of remedial legislation by Parliament.

The first step in the direction of reform was taken as early as 1800 when Oxford, "waking from its long neglect", passed a statute instituting examinations for a degree. Between 1800 and 1850 considerable progress was made in affording better educational facilities in the colleges, and before the middle of the nineteenth century a man who really desired to obtain a good classical education could do so at either Oxford or Cambridge. At Cambridge there were also facilities for the advanced study of mathematics. Under the statutes of Elizabeth and Laud it was, however, impossible for the university to take its rightful place. The colleges remained supreme, and the university was in the ignoble position of possessing neither money nor authority, of being unable to make or enforce any rules concerning who should be allowed to enter, or what studies should be pursued in order to gain its honors. All the teaching was done by the colleges, and in each college the tutors were selected from graduates on its own foundation. The number of students in a college varied from ten to about 140, and each set of students—big or little—had to be instructed in all branches of knowledge by the little group of two or three instructors—sometimes only one—who constituted the teaching force of the individual college. In describing the condition of the universities between 1840 and 1850, Mr. Tillyard quotes freely from Sir Charles Lyell's *Travels in North America*, where the best account is to be found of the English universities at this period, an account interpolated by Lyell into his geological observations as an answer to questions asked him when he attended the annual meeting of American geologists at Boston in 1845. During the first half of the nineteenth century, there were professors of

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the universities, and many new chairs were created; but the lectures of these professors had no place in the curriculum of the man who was working for a degree, and their classes were consequently neglected and their office rendered of no account.

Possibly reform from within might have progressed further with the lapse of time; but criticism of the universities did its work and the nation became impatient. In 1850 royal commissions were appointed to inquire into the universities of Oxford and Cambridge. The commissions were to receive only voluntary evidence; but their appointment was strongly resented by many of the members of the universities. The commissions made long and detailed reports with many recommendations for reform. The most important were aimed at the restoration of the supervision of the university over the studies of its members, and such reforms in finance as were necessary to afford suitable incomes for the universities. The reports however were not summarized, and Mr. Tillyard speaks of the recommendations being "doled out" in a fragmentary fashion which deprives them of much of their impressiveness and of their usefulness.

The result of the investigations of the royal commissions was the legislation of 1854 and 1856 by which some important reforms were effected, and by which dissenters were admitted to the privilege of university education, by the removal of tests on entrance. Mr. Tillyard carries to its conclusion the history of the abolition of university tests, of which there now remains one only—the test demanded by Oxford of students taking the divinity degree. Cambridge voted in 1912 to remove this test by a vote of 434 to 323, but at Oxford the vote went against its removal. Mr. Tillyard then gives a careful analysis of the legislation of the seventies, which for the first time since the Reformation set the universities in their rightful place, and provided incomes for them from the taxation of the colleges. The latter part of the volume is occupied with suggestions of reforms which still remain to be effected before the two older universities can be regarded as the final links in a great national scheme of education. These chapters deal with the enormous outlay of some of the colleges on the education of an undergraduate. The cost of university life at Oxford or Cambridge to an undergraduate is on an average £200 a year for tuition, books, fees, room and board. In addition the colleges from their endowments spend per undergraduate sums varying from £47 at St. Catherine's, Cambridge, to £227 at King's. This variation in expenditure is criticized and suggestions are made for a better management of college finances. Mr. Tillyard shows the absurdity of granting

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the same degree to a pass student whose work is scarcely beyond the high school stage, and to the honors man who may have taken a brilliant first-class. Although the book does not purport to be a description of the present condition of Oxford and Cambridge, there is nothing in print which gives more clearly, or in fuller detail, all the complexities of college and university at Oxford and Cambridge, which make these two English institutions unique in the educational world.

ANNIE G. PORRITT.

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Democracy and Race Friction. By JOHN MOFFATT MECKLIN. New York, The Macmillan Company, 1914.—xi, 273 pp.

Books in regard to the negro have been written by historians and by novelists, by reformers and by reactionaries, by white men and by colored, by trained observers and by untrained emotionalists. Though the subject has apparently had every possible variety of handling, Professor Mecklin approaches this old problem with a fresh method of treatment. Though occupying a chair of philosophy, he nevertheless shows thorough competence to discuss his subject from the aspect of the sociologist. Works treating of the general problem of race have been written from this standpoint, but none has brought to bear in such a way the principles of scientific sociology upon the definite field of the American negro problem.

The volume discloses a comprehensive knowledge of the literature of the subject, as well as extensive correspondence with authorities throughout the South in touch with the present situation. It also shows much first-hand personal knowledge. The author writes with sympathy and with distinct freedom from prejudice. He appears to be a southerner, yet he frankly acknowledges the faults of the South.

The subject is developed along the following line. It is pointed out that race friction and prejudice are essentially phenomena of the group rather than of the individual. The problem is not individual, but social. Hence the importance of approaching it from this aspect. Social solidarity is not a matter of artificial nurture or of legislative mandate, but depends upon the homogeneity and uniformity of nature and equipment of the members composing any society. Between the negro and the white there are fundamental racial differences.

One cannot rightfully call this racial inferiority, but simply racial difference. The chief race traits of the negro which the book selects for mention are the functioning of his mental processes through the line

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of imagery rather than through the process of abstract and distant reasoning, which leads him to live for the day rather than to plan for the unseen future; his strongly developed sex instinct, which leads him into behavior discordant with white standards, but which with education may possibly flower into ideal family and home life; a docile and elastic temperament, which leads to submissiveness; and his strong gregariousness, marked nevertheless with almost complete absence of talent as a social organizer. Is the negro, with these traits, capable of assimilating the civilization of the whites? The answer to this is not to be given with certainty, as is done adversely by Professor Hart and Mr. H. H. Bancroft, and affirmatively by many others. Professor Mecklin says that the negro is on trial now, and that the issue is largely in his own hands.

The book sets forth that race antipathy, by itself, may be conservative of racial integrity, social purity and solidarity. Therefore prejudice against color may in its last analysis be prompted by not unlaudable instincts of group self-preservation. History throughout the world shows that as a matter of recorded fact the dominance of the white group is the prerequisite of anything like satisfactory relations between English-speaking whites and the African race. Race friction is not peculiar to America. It is the inevitable accompaniment of contact between divergent race groups. There is a precise parallel between the behavior of the whites in the South and the English whites in South Africa. Harmony is most nearly attained when the weaker group accepts the will of the stronger group. On the other hand, the "color line" and friction arise where large numbers of the different races live side by side under such institutions that paternalistic control, or legislative control, cannot take place. This is the case under our democratic institutions. Furthermore, pressure from group contacts increases as the groups increase. This is exemplified in the present history of Philadelphia, Boston and other northern cities. Race prejudice, however, may be not disastrous either for the discriminator or the discriminated against. It did not destroy the Jew. On the contrary, it was one of the most potent factors in his present equipment for advance, once leadership and strong social ideals were developed.

Before the Reconstruction period the negro shared the master's ideals, somewhat as does a child in the family. For this has been substituted competition with the social group of whites. Imitation as it existed before has been cut off. It is now external, rather than assimilative. The desirable feature of the white home is often judged to be

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its piano rather than its purity. The negro is largely shut off from the white man's world. The imitation process must take place within his own group. The close social contact of the races has now almost entirely disappeared.

The social salvation of the negro must be worked out within his own group. Intellectual leaders should supply him with ideas which will inspire him with honest race pride. The task of the negro leader is the preservation of fit group traditions and the creation of social habits within the home and elsewhere which shall insure the training of characters socially valuable. The imperfectly socialized group, and the poverty of group traditions, must be remedied. The immediate and imperative task of the negro leader is to create a social conscience. This must be largely the creation of the group itself. In working out this end, the author holds that the chief agency must be the negro home. After that will come the church and the school. The negro press has failed in this task; but the negro home has made good, in spite of its defects. The betterment of home life is inseparably connected with education and with industrial independence, which therefore become of urgent importance.

There are some minor inaccuracies in the book. It is a question whether even centuries of slave trade could arrest the development of the combative instinct in the native Africans, as the author seems to think possible. It may be questioned, even though the ten years of the Reconstruction period worked great damage upon the advancement of the negro, whether this ten-year period if used to greatest advantage would have done all or much that was needed toward the building-up of habits of thrift and the winning of an independent place in the social order. The author states that the planter has no means of redress when deserted by a negro in his debt, since he cannot forcibly hold the negro for debt. This requires some qualification. Some of the southern states have laws which practically cover this situation. As instances of such regulation may be cited a statute of (Laws of Alabama, 1901, page 133, section 1), and a decision of the supreme court of the same state reported in 86 Alabama 26.

If the reader does not agree with the views of the book, yet he will recognize its high value. Its discussion of the subject in the light of our present-day knowledge of sociology renders it an important contribution to the field it covers.

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Luxus und Kapitalismus. By WERNER SOMBART. Leipzig, Duncker and Humblot, 1913.—viii, 220 pp.

Krieg und Kapitalismus. By WERNER SOMBART. Leipzig, Duncker and Humblot, 1913.—viii, 232 pp.

While engaged in revising his major work on *Modern Capitalism* Professor Sombart ran out three independent but parallel lines of economic investigation, with a view to determining the influence of the Jewish race, luxury, and war upon modern capitalistic development. Realizing he could incorporate in his major work only the conclusions arrived at, and finding that each line of investigation led to fairly definite and unified concepts, Professor Sombart decided to present the results of these preliminary researches in three separate studies: *The Jews and Modern Capitalism, Luxury and Capitalism*, and *War and Capitalism*. In the first of these studies—which has already been favorably reviewed and admirably translated withal—Professor Sombart shows the "overtowering importance" of the "old Jewish God, Jehovah" upon the economic development of Europe. In the two succeeding studies—which are the subject of this review—Professor Sombart establishes the all but equal influence exerted by the other "God-heads" of the capitalistic trinity: Luxury and War.

Each of these latter studies proceeds from a paradox. After all that has been said of the "fallacy of saving," the bourgeois world still subscribes to Adam Smith's naive notion that capitalistic accumulation proceeds from the parsimony of the poor. Mandeville and other eighteenth-century writers were of the opposite opinion. In his first study Professor Sombart resuscitates this heterodox view and shows how capitalistic development is stimulated instead by the luxury of the rich. Then again, war is supposed to be essentially destructive. So it is, as Professor Sombart clearly shows. On the other hand, war gave rise to the national state and the colonial possessions thereof. These in turn induced and encouraged capitalistic expansion. Hence Professor Sombart concludes: "Without war capitalism could not have come into existence." Thus the two paradoxes are resolved. Granting the wastefulness and destructiveness of luxury and of war, nevertheless these two expanding factors stimulated a demand for commodities, of such quality and in such quantities, as could be met only by resort to and the extension of the capitalistic system of production.

In his preface Professor Sombart says his first study should be entitled not simply "Luxury and Capitalism," but "Love, Luxury, and

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Capitalism." Because it was the "cult of love," fostered and extended by minnesingers and troubadours, artists and poets, the cult of love instituted at the courts and set up in the cities, that stimulated this demand for luxury, which in its turn occasioned capitalism. So in the last analysis woman becomes accountable again—in this case the "new woman" of the rising "courtesan class"—for the development of capitalism from the fourteenth to the nineteenth century. Of course woman's demand for luxury commodities could become effective only through the accumulation of the requisite money-means in the hands of her devotees—kings and courtiers, city magnates and financiers. Such accumulation occurred after the crusades and during the centuries of state-development that followed. It was this demand for luxuries, emanating from the courtesans and made effective by their supporters, that, in Professor Sombart's opinion, succeeded in transforming the productive activities of Europe from feudal into capitalistic terms.

However it was not luxury alone which accomplished this result; war must likewise be taken into account. Capitalism had to win its way by the force of arms—in first instance, against the ancient régime, represented by the Roman Catholic Church. The new order, represented by the rising National State, was inclined toward Protestantism and Reform. Hence the long drawn out, though ecclesiastically undecided, wars of the sixteenth century. On the conclusion of these wars the monarchs of Europe had still to contend among themselves in order to round out their national frontiers and secure each his fair share of colonial possessions. In the course of these armed conflicts military methods became completely transformed. In place of the heterogeneous, disintegrated forces of feudalism, the modern army and navy appeared, composed of large, compact, organized, disciplined masses of men under the supreme control of royal war-lords, whose task it was to equip them and maintain them at home and abroad. Through these changes in the military system a war demand was generated, which became as great, if not greater than the luxury demand expanding at the same time. To be made effective this war demand also required the accumulation, by finance ministers and financiers, of money-means, to be placed at the disposal of the state. But even with the money-means available, feudal agriculture and mediaeval handicraft were altogether incompetent to afford the requisite supply of fire-arms, food, clothing and equipment. To furnish and maintain modern military forces, capitalistic methods of production are required. Thus, however destructive in their immediate results, the ultimate effect of these religious, national and colonial wars was immensely to stimulate the capitalistic

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development of Europe from the fourteenth to the nineteenth century.

Professor Sombart's greatest service to economics seems to the reviewer to lie in his perspicuous visualization of the capitalistic system of society. Yet there is little in this author's works to correct the prevailing impression that capitalism is a modern phenomenon. If capitalism were really the result of saving and of the invention of machinery, as is popularly supposed, it would indeed be a modern phenomenon. But if, as Professor Sombart believes, capitalism is the outcome of luxury and war, it is as old as ancient Babylon or Western civilization itself. To be sure, modern capitalism differs from ancient capitalism in several significant respects, because of different geographic and ethnic antecedents. For all that, modern capitalism should rightly be regarded as an offshoot of ancient capitalism, transplanted from the East to the West by the crusades, and not as an independent outgrowth of feudalism, as is historically supposed.

These preliminary studies of Professor Sombart's are simply sketches, and should be accepted as such. Like other systems of society, capitalism is the effect of a great many proximate causes, all of which are ultimately to be derived from the economic instinct operating among different peoples in different places. Of these different peoples, Professor Sombart has chosen one, the Jews; of the many proximate causes, Professor Sombart has taken two, luxury and war. Each of these three influences he considers separately and apart. The result is that this series of studies lacks unity, and consistency also in several respects. On the other hand, there is a certain advantage to be derived from such one-sided procedure. Following one cause exclusively at a time, Professor Sombart leads us along many fascinating by-ways of literature to arrive in each instance at significant, and in some cases at surprising, conclusions regarding Jewish influences and the capitalistic consequences of luxury and war.

Professor Sombart's style is easy and, considering his native tongue and his chosen subject, remarkably readable. His facts are widespread in their scope, yet precisely set forth; his figures are copious in their extent, yet concisely set down; his quotations are well selected and always apt; as for his inferences, some seem to the reviewer to be far-fetched, others peculiarly pertinent. In disparate, discursive studies of this sort one should not insist too strongly on extreme accuracy of historical or scientific detail. Such discrepancies and inaccuracies as appear in these preliminary studies will no doubt be harmonized and rectified in the new and revised edition of the author's *Modern Capitalism*. In the meantime it is to be hoped some translator will provide

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for the English-reading public as good a translation of Professor Sombart's *Luxury and War* as Dr. Epstein has given us of *The Jews and Modern Capitalism*.

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La Protection Légale des Travailleurs aux Etats-Unis. By MAURICE DEWAVRIN and GEORGES LECARPENTIER. Paris, Marcel Riviere et Cie, 1913.—348 pp.

Traité des Retraites Ouvrières. By P. PINOT and J. COMOLET-TIRMAN. Paris, Félix Alcan, 1911.—viii, 444 pp.

L'Acheteur: Les Ligves Sociales d'Acheteurs. By MAURICE DESLANDRES. Paris, Félix Alcan, 1911.—507 pp.

Le Protectionnisme Ouvrièr. By GIUSEPPE PRATO. Translated by GEORGES BOURGUIN. Paris, Marcel Riviere et Cie, 1912.—vi 318 pp.

The work of Dewavrin and Lecarpentier consists chiefly of a lengthy analysis of the labor legislation of the United States, classified under the traditional heads. No attempt has been made to appraise the character of the administration, nor do the authors offer any conclusions as to how far the legislation has been effective in realizing the aims of the legislature. For example, in the chapter on *Conciliation et Arbitrage* we find an accurate and comprehensive statement of the legal provisions constituting and controlling the various boards of mediation and arbitration, federal and state, but no estimate of the effectiveness of these boards relatively or absolutely. The work is similar, therefore, to the well-known work of Lindley D. Clark on *The Law of the Employment of Labor*. It is, however, distinctly inferior to that treatise for American students, since it contains very scanty discussion of the court decisions.

One feature of the book will, however, be of considerable interest to American readers. At the end of each chapter the authors have added a summary of the French legislation on the same subject, and, in the conclusion, they have brought together the chief differences between the French and American labor legislation. In brief, they find that, as far as the substance of the law goes, the American law is superior to the French except in provision for old-age pensions and in compensation for accidents. They find, on the other hand, that the organs of interpretation and enforcement in this country are inferior to those in France.

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The subject of old-age pensions has hitherto attracted little attention in the United States, but it may reasonably be expected that in the course of time the same influences which have led to the establishment of systems of old-age pensions in other industrial countries will make themselves felt here. The French system of old-age pensions was long considered and has been slowly built up. In many features it differs from the systems in other countries and it therefore deserves careful consideration. The law of 1910 is fundamental in the French system, and the detailed commentary offered by P. Pinot and J. Comolet-Tirman in their treatise affords the best exposition of that law. The work contains, in addition to a luminous exposition, the full text of the law and a useful practical guide for each of the classes of persons concerned in the law.

It is a curious fact that, despite the great annual output of economic writing in the United States, it remained for a French economist to give us the first exhaustive work on the Consumers' League movement. In his entertaining and instructive monograph, M. Maurice Deslandres, Professor at Dijon, deals with the history and principles of the leagues and describes in detail the activities of the American, French, German and Swiss leagues. Naturally, the account of the French league looms somewhat large and the American reader would have been gratified by a fuller account of the activities of the American League—the mother league, and, one judges, still the most effective. But the sections of the book dealing comparatively with the work of the different leagues and the principles of the movement are of general interest to all students of social movements.

The author, it is perhaps needless to say, is convinced of the great possibilities in interesting the consumer in the conditions under which the goods he buys are made and sold. He lays chief stress, therefore, on the cultivation of the conscience of the individual. His treatment of the collective action of the consumer through the devices of the "label" and the "white list" is, however, less full than one would have wished. He is convinced of the desirability of both devices, but does not attempt any critical estimate of the results actually achieved nor—what is more important—of the limitations on the use of these devices.

The work of Professor Prato, published in 1910 and now translated into French, is the most important general study of the exclusion of immigrants which has so far been made. The historical account of the development of exclusion is marked by wide reading and penetrating

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judgment as to the importance of particular incidents. When, however, Professor Prato passes to argument, he is far less convincing. Throughout he sees only the benefits derived from immigration, and his treatment of such questions as the effect of immigration on the standard of living is far from satisfactory. His attempts to show the evils of exclusion by the case of Australia is about as scientific in method as the ordinary campaign speech. But the book, despite its partisan tone, is one of the most notable in the literature of immigration. It is to be hoped that its translation into French will increase its accessibility to American students.

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The Occupational Diseases: Their Causation, Symptoms, Treatment, and Prevention. By W. GILMAN THOMPSON, M. D. New York and London, D. Appleton and Company, 1914.—xxvi, 724 pp.

Dr. Thompson's comprehensive and authoritative treatise on occupational diseases is at once an indication of the interest which enlightened American physicians are beginning to take in this subject, and a notable contribution to the campaign for industrial hygiene in which the author has been a valued leader. Although written primarily for the use of physicians, it is enriched with full information in regard to safety and sanitary devices, the progress of regulative legislation, and other aspects which concern more nearly the employers and employees, upon whose intelligent coöperation progress toward better industrial conditions so vitally depends.

The book is divided into seven parts. Part i treats of the history, classification, general pathology and etiology of occupational diseases, and part ii of general remedial measures. Parts iii to v discuss in detail different occupational diseases: first those due to irritant substances, then those due to harmful environment, and finally special occupational diseases. In part vi the influence of special conditions (e. g., alcoholism, drug habits etc.) on the occupational diseases is considered, while part vii covers the miscellaneous occupational diseases grouped by industries not included in the foregoing classification. An analytical table of contents and an exhaustive index enable the reader to turn readily to the discussion of the particular diseases which may happen to interest him.

Writing as a trained physician and scientist, Dr. Thompson is as careful to emphasize what we do not yet know about occupational diseases in the United States, as what, to no small extent through his own

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observations and researches, we do know. His cautious statements are in striking contrast with the glib generalizations into which social workers are sometimes led by their zeal for reform. Yet he gives clear evidence of his own eager desire for preventive measures, whether secured through the voluntary action of employers or through state interference. Most valuable as suggestions as to the lines which preventive work in the United States should take is the information given as to what is being accomplished abroad. Not only is the richer English material freely drawn upon to supplement the meagre American literature, but the leading monographs on the subject in German, French and Italian, are cited for statistical and other information. Photographs are reproduced of the museums of safety of Berlin and Vienna and of the unique hospital and clinic for occupational diseases of Milan. These and the one hundred and fifteen other illustrations, mostly of typical cases of occupational diseases and of preventive devices, add greatly to the interest and value of the book.

The United States is just beginning to appreciate the importance to national welfare of an adequate treatment of occupational diseases. The First National Conference on the subject was called by the American Association for Labor Legislation only four years ago. Since that time a Second National Conference has been held; a committee under the chairmanship of Dr. Thompson himself has supplied material for a book of instructions and a uniform reporting blank for physicians to make the compulsory occupational disease reporting law effective in New York; the use of poisonous phosphorus in the match industry has been stopped through national legislation; and several states have passed carefully-drawn statutes to lessen the danger of lead poisoning and other occupational diseases.

The most serious obstacle to this progress has been ignorance. This was illustrated at a recent congressional hearing at Washington on the pending bill for the compensation of federal employees. It was seriously asked whether a government employee, who preferred to ride to his office on horse-back to going in a street car and who should be thrown and injured on his way to his work, would be considered to have suffered an occupational injury. Dr. Thompson's book should go far to clear up this ignorance. He not only describes carefully the principal occupational diseases recognized by physicians in this country and abroad, but he impresses upon the mind of the reader the causal connection between these diseases and different occupations. He thus compels us to recognize that the adoption of some system by which the industries causing occupational diseases would be required to provide

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for their victims, as they are now so generally required to compensate the victims of industrial accidents, is demanded not only by considerations of social justice but by plain common sense.

The author is to be congratulated upon the completion of such an excellent treatise in a field in which so much of the material had to be gathered at first hand; and everyone interested in the promotion of industrial hygiene in the United States is to be congratulated on having the solid foundation for future efforts which this book provides.

HENRY R. SEAGER.

Die Formen des wirtschaftlichen Kampfes (Streik, Boykott, Aussperrung u. s. w). Eine volkswirtschaftliche Untersuchung auf dem Gebiete der gegenwärtigen Arbeitspolitik. By G. SCHWITTAU. Berlin, Julius Springer, 1912.—xi, 490 pp.

This study presents in its 490 pages the several important phases of industrial strife from what may be called an international point of view. Strikes, boycotts and lockouts, as they occur in the principal countries of Europe and America, are treated as revealing the practical policies of the laboring classes.

The first part presents a brief historical review of various leading theories of industrial relations. The early writers, Hobbes, Mandeville and others, are used as the starting point. Then follows a brief sketch of the theories of Adam Smith as leading to the *laissez faire* school. Following a summing-up of the Ricardian analysis, is a treatment of Marx and the class struggle theory. Finally is noted the appearance of the sociological point of view and its interpretation of class interests. This entire section is intended simply as a background against which to set forth the various theories used in justification, on the one hand, and in condemnation, on the other, of the policies adopted in the industrial struggle.

The general subject of strikes then receives an elaborate analysis, occupying about one-third of the entire work. This analysis proceeds in two main parts: the nature of the strike and the statistics of the strike. Here is gathered together both the philosophy and the facts of experience from Europe and America, so far as the limited space will allow. Tables compiled from the statistical publications of the several countries accompany the descriptive material as to the number of strikes and their causes and effects. The absence of satisfactory information on this topic to be found in American reports is noted and made the subject of mild criticism.

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Less space is given to the discussion of the boycott (40 pages) though this topic is made to include the label and the white-list as well. Doubtless this is due to the fact that the boycott is more particularly an American development. It is the author's opinion that there is not available enough data to decide whether the boycott is a practical success or not. On the question of the morality of the boycott, reference is made to the agreement among the most intelligent and most popular labor leaders in the view that it is not in the least objectionable; yet from the standpoint of social significance and the complex inter-relations of modern industry, the author supports the opinion that it can hardly be justified.

The employers' side receives attention in a separate chapter. Here is summed up the leading facts on employers' organizations and their policies. The last chapter makes brief reference to organized methods of conciliation and arbitration in Europe, Australia and America.

The study as a whole is a concise statement of facts and theories made in such a way as to afford opportunity for comparison of methods and practices in the various countries. It deals with fundamental and underlying principles rather than with surface facts, and institutes its comparisons primarily between underlying relations. Its translation into German from the Russian renders available to a wider number of readers a contribution of distinct worth. A list of references covering thirty pages at the end indicates the scope of the sources consulted.

G. G. GROAT.

UNIVERSITY OF VERMONT.

The Cause of Business Depressions as Disclosed by an Analysis of the Basic Principles of Economics. By HUGO BILGRAM, in collaboration with LOUIS EDWARD LEVY. With twenty-six diagrams. Philadelphia and London, J. B. Lippincott Company, 1914.—xvii, 530 pp.

The thesis here maintained is that business depressions are caused by inadequacy of the currency. The demonstration runs as follows:

When prosperity prevails, the active demand for money stimulates borrowing and sends up interest rates, thereby increasing the total payments made by active business men to the relatively passive class of lenders. This process tends to contract the volume of currency available for business use; but this effect is not marked for some time because the lenders put the excess of their incomes over their expenditures back into active use by making new loans. Nevertheless the

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effective supply of currency does not grow as fast as the money work to be done. For (1) prices rise and "the same amount of money can no longer compass the same volume of traffic"; (2) "an increasing fraction of the total money is . . . withheld from circulation" by the growth of savings among the steadily-employed wage earners; (3) as borrowers approach the limits of their credit, the volume of new loans declines (page 368).

Thus prosperity leads in the end to monetary stringency—that is, to an increase of passive funds at the expense of active funds. Business enterprises are compelled to retrench because they cannot get enough money to finance their operations and because they fear future pressure. As the stress becomes more severe, hoarding begins, bank reserves decline, loans are curtailed, prices fall and a financial panic is imminent.

During the depression of trade which follows, outstanding debts are reduced by bankruptcies and by repayments. Interest rates on new loans go down and old loans are refunded. Hence the aggregate of interest payments made by business men to lenders declines—declines indeed until it is actually less than the current expenditures of the capitalist class. It is this result of depression which finally starts a revival of prosperity. For, since lenders spend more than their current receipts, their passive funds are gradually converted again into active funds. As the locked-up money and credit currency flow back into the channels of trade, business men are enabled to reopen their idle plants and to re-employ their idle men.

New crises and depressions could never occur if business men were always able to secure enough funds to buy and sell as they wish. They cannot do so now chiefly because our laws limit the amount of notes and deposit currency which the banks can provide. By restricting competition in the making of credit currency, we have unwittingly enabled lenders to impose a monopoly tax upon industry—that is, to exact interest rates exceeding just compensation for their personal services and their risks. Of course the remedy is to reform our banking laws by accepting assets as the basis of our currency—not "ephemeral business paper," but national, state and city bonds, and "real-estate liens, of which there is undoubtedly an ample supply attainable to cover every possible demand for currency" (page 407).

Mr. Bilgram has been in business as a manufacturer of machinery for thirty-five years. But in framing his theory of crises he has paid singularly little attention to business experience. Instead, he has based his investigation on "those economic propositions which are manifestly true," and has proceeded by "methods of purely logical deduction"

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(page v). Had he appealed to experience he would have found that his pet reform, real-estate liens as a basis for bank credit, has been tried in several American states with disastrous results; that when limitations on the expansion of bank credits have been relaxed in brisk times, speculation has been encouraged, prices have risen rapidly and crises have been rendered more violent; that there is no evidence of the accumulation of passive funds in the hands of lenders during periods of prosperity; and that there are several important factors in causing crises not taken into account by his own "full and complete explanation."

WESLEY C. MITCHELL.

COLUMBIA UNIVERSITY.

Business Organization and Combination. By LEWIS H. HANEY New York, The Macmillan Company, 1913.—xiv, 483 pp.

In this volume the author has included a number of topics not at all closely related. The four books into which the work is divided deal with the general nature of business organization, the evolution and forms of business organization, the structure and life history of a typical business corporation, and with public policy, the corporation and trust problems.

The discussion in book i is merely introductory in character. The most interesting portion of the volume is contained in book ii. Here the author presents a lengthy treatment of what he terms forms of business organization. In his terminology, "business organization" includes not merely partnerships, joint stock companies and corporations, but also all forms of combination. The next chapter entitled "Simple Business Trusts" is largely a discussion of trusts in the legal sense and serves to introduce the following classification of business organizations growing out of combinations: I. Simple Combinations. Associations (direct combination of natural persons as in partnership). II. Compound Combinations. (1) Associations (the loosest agreements directly between individual members of different associations, trade "associations"); (2) Federation (combinations of organizations which remain separate and retain considerable autonomy, most simple arrangements and pools); (3) Consolidation (combinations of organizations in which, while members may remain nominally separate, direction of business is fused). The last classification is further divided as follows: (A) Partial Consolidation, (a) Securities Holding (direction of business organizations consolidated through stock ownership, with separate existence formally maintained); (B) Complete Combination, (a) Merger (com-

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plete consolidation, members of one business organization absorbed by another), (b) Amalgamation (complete consolidation, members of two or more organizations coalesce to form a new organization).

The development and discussion of this classification occupies over a quarter of the entire volume, and constitutes its most important and valuable contribution. Each division is illustrated by one or more concrete examples. In his discussion of federation organization Professor Haney has attempted to draw a clear line of distinction between "agreements" and "pools". He confines the use of the term "pool" to those cases of voluntary association where the members seek "a degree of control over price by combining some factor in the price-making process in a common aggregate among the units." It may be pointed out that very few "pools," according to Professor Haney's classification, are so simple in character as to be entirely within the scope of this definition. As he himself admits (page 164), pooling arrangements frequently contain specific price agreements. They may also provide for curtailing output. In both cases it is evident that such voluntary combinations are both "pools" and "agreements". By far the larger proportion of voluntary combinations are formed with more than one end in view. The author has paid little or no attention to this fact. It would seem that an accurate classification is obtainable only by developing it from the standpoint of the number of objects contemplated by the articles of association entered into. If, for example, an "agreement" or "pool" provide for fixing prices, dividing output, curtailing output and pooling profits, these facts should be recognized by a fourfold classification.

Objection may also be urged against another item in Professor Haney's classification of combination organization. A "merger" is defined as the absorption of the members of one business organization by another; an "amalgamation" occurs when members of two or more organizations coalesce to form a new organization. Both the situations defined are commonly known as mergers or combinations, the conditions for such an act being usually the outright sale of the properties and the dissolution of the vendor company or companies. Clearly there is a distinction between the case in which one or more corporations are absorbed by the vendee corporation and one in which the vendee corporation is organized for the specific purpose of merging two or more corporations. But it may be questioned whether any purpose but that of confusion is served by the adoption of the term "amalgamation" to express this differentiation, since the term has already gained currency as applicable to all cases of consolidation, whether by

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"merger" or by "amalgamation" in Professor Haney's sense of the terms.

Book iii contains material of which a large portion pertains to financial organization and belongs to the subject of corporation finance. Such subjects as promotion, underwriting, reorganizations and receiverships seem somewhat out of place in a discussion of business organization, as that term is commonly understood.

Few students of the trust problem will thank Professor Haney for adding to the already existing confusion by treating the corporation and trust problem together, as he does in book iv. His view is that "the corporation problem" is intimately connected with the "trust problem." The reviewer is inclined to think that they have little or no relation to one another. One of the biggest problems in connection with trust organization is that of unfair competition. In what sense is the question of unfair competition intimately associated with the corporation problem? Or can it be said that over-capitalization, which is distinctly a corporation problem, is "related to the trust problem," even though it has chanced that certain trusts have been over-capitalized?

Professor Haney discusses so wide a variety of topics that his volume seems heterogeneous to a high degree. Complete books have been written on each of the important topics to which he devotes attention: business organization in the restricted sense of the term, corporation finance, legal trusts, the corporation problem, and the trust problem. So far as class-room use is concerned the volume would be of great service in a combination course which sought to cover all these topics.

WM. H. S. STEVENS.

COLUMBIA UNIVERSITY.

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BOOK NOTES

A reading of the *History of the Supreme Court of the United States* (Chicago, Charles H. Kerr and Company, 1912; 823 pp.), by Gustavus Myers, inclines one to the belief that no Socialist has ever sat on that high tribunal. The lens through which the author has looked at his subject may be inferred from a reading of the index. Under "banks" there are 41 references. "Bribery and corruption" is noted 62 times, "railroads" 43 times, and "land frauds" 30 times. Under "Constitution of the United States, its drafting and interpretations and questions regarding," there are 19 references; and under "Dartmouth College case" 18 references. The author's main conclusion is that "the personnel of the Supreme Court has represented the dominant class section or sections of each era . . . completely, consistently and accurately." He has gathered together a voluminous and interesting mass of material about all the justices who have sat on the Supreme Court, their personal friendships, their family and social affiliations, the history of the cases in which they were advocates before their elevation to the bench, and the decisions which they rendered. He is impressed by the fact that "the Supreme Court as a whole has been peculiarly free from venal corruption in an age when such corruption was common if not continuous." His work is the fruit of extensive research. His pages abound in references to documentary material. As a study of the importance of judicial decision in affording to property that protection claimed by it under the Constitution, the recital is impressive. It convinces one that any radical change in the system found by the courts to have been ordained by the Constitution can be best attained through the amendment or revision of that instrument. The service of the book would have been enhanced had the author discussed more fully the legal issues in the litigation considered, made clearer the possibility of decisions contrary to those reached, and indicated to what extent such contrary decisions might have altered the course of economic development.

If it were wise to review a book "by title only," it might be well merely to call attention to the fact that Mr. Allen L. Benson, the author of *The Truth About Socialism*, has published a commentary on the system of government in the United States under the title of *Our Dishonest Constitution* (New York, B. W. Huebsch, 1914; 182 pp.).

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But the title, in this case, seems to be ill-chosen. That the charge of dishonesty is not directed at the men who framed the Constitution or voted for its adoption seems evident from the author's approving quotation from Woodrow Wilson's *Division and Reunion* to the effect that "the federal government was not by intention a democratic government." The dishonest folk are previous historians. Mr. Benson presents no facts of importance which have not already been made known through the researches of scholars who have written in a more scientific temper. His own ideals of honesty may be inferred from his strenuous advocacy of his proposal to repudiate every national debt in the world, because most debts are war debts, and war should be discouraged. The book contains interesting suggestions for a new federal constitution which shall be truly democratic. For the most part these suggestions are along the line of the more radical programs now being adopted in some of our states—initiative and referendum, proportional representation, popular election and recall of all officers etc. Mr. Benson's appeal is to the emotions rather than to the intellect. Some of his proposals deserve an advocacy more distinctly thoughtful than that which he has undertaken.

The importance of a knowledge of public law to all students of the social sciences is becoming increasingly recognized. For the training of the future lawyer, the case-book method of instruction has amply demonstrated its superior excellence. It is manifest, too, that the student of government as well as the student of law can understand thoroughly the import of judicial decisions only by an analysis and comparison of the judicial opinions. For such students a collection of the important opinions is almost a necessity. This need has been most admirably met by Dean James Parker Hall of the Law School of the University of Chicago in his *Cases on Constitutional Law* (St. Paul, West Publishing Company, 1913; xxxii, 1452 pp.). By the substitution of brief abstracts for the statement of facts in the official reports and by the judicious cutting down of the all-too-often prolix opinions of the judges, the compiler has been able to present within the compass of a single volume all of the important decisions of the Supreme Court in which the Constitution has been interpreted. The footnotes indicate the applications and extensions of the doctrines laid down in the cases printed, the qualifications of those doctrines and the weight of authority on controverted questions. The material as a whole has been so well selected and presented that the collection can serve as the basis for private study. As a source-book aid to one reading a treatise on the subject, it is invaluable.

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Another important aid to the study of the public law of the United States is to be found in Professor Ernst Freund's *Cases on Administrative Law* (St. Paul, West Publishing Company, 1911; xxi, 681 pp.). The subject-matter of the collection, says the compiler in his introduction, is "the nature and the mode of exercise of administrative power, and the system of relief against administrative action." Though many of the cases included in the collection involve the constitutionality of legislation, there is little duplication between this work and that of Dean Hall. A knowledge of the subject-matter with which each deals is essential to any satisfactory comprehension of the nature of the conflicts which arise between individuals and governmental authorities, and of the principles by which these conflicts have been resolved or which may be discovered from the solutions reached. As the field of administrative activity widens, personal and property interests come more and more in conflict with the decisions of administrative officials, and relatively less in conflict with the more general rules laid down by the legislature. Professor Freund's classification of his material brings out into clear relief the fact that the powers which may be exercised by administrative officials cannot be determined solely by reference to general principles defining the theoretical relation between the administration and other departments of government, but that they depend largely upon special considerations peculiar to the various individual interests which administrative action may effect. All students of public law owe a great debt to Professor Freund for the painstaking and exhaustive research which has gathered together so much important material, and for the judgment and insight with which it has been arranged.

Article iii of the Constitution which defines the extent of the federal judicial power, and the statutes of Congress passed in elaboration thereof, have given rise to much litigation. A considerable portion of the law of federal jurisdiction is essentially judge-made law. Many of its intricacies are exceedingly baffling to the lawyer, to say nothing of what they must seem to the layman interested only in the more general aspects of the interrelation of the different judicial bodies in the federal system. The needs of this latter class are satisfactorily met by the volume on *Federal Procedure* (Second Edition, St. Paul, West Publishing Company, 1913; xvi, 766 pp.) by Robert M. Hughes. The passage of the Judicial Code since the appearance of the first edition rendered imperative the revision which the author has undertaken. This code has been printed in the appendix, together with the Supreme Court rules and the equity rules; and many statutes are quoted verbatim in the text. The procedural side of constitutional law would not be

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classed among the "attractive nuisances," but a knowledge of it is essential to an understanding of how the federal system of government actually operates.

Professor Raleigh C. Minor's *Notes on Government and States Rights* (Charlottesville, Virginia, Anderson Brothers, 1913; x, 192 pp.) is an examination of "the most important and fundamental principles applicable to good government everywhere" and "that portion only of governmental theory in this country that refers to mutual relations existing under the Constitution between the states and the United States." Under the former head are considered the origin and nature of government, limitations upon governmental powers and the various forms of government. Nearly all of the discussion is a restatement of theories which have been more fully elaborated elsewhere. Seekers for the concrete will be disappointed. The second part of the book presents the arguments which have been urged by the advocates of the states-rights school and by their opponents. This material is so arranged that the reader may comprehend easily the issues and the conflicting arguments. According to the author, the Civil War has had no effect on any of the doctrines of the states-rights school except the doctrines of nullification and secession. The opinion of the Supreme Court in Texas *v.* White is quoted to establish the point that the purpose of the war was to preserve the existing Union, not to make a new or different one, and that it effected no change in the nature of the Constitution. The book closes with an impassioned plea against the extension of the powers of the national government by construction, merely because of the argument from inconvenience or from the inefficiency of the state governments or of state regulation. "Nothing is more insidious, nothing more dangerous. . . . God save the fair fabric of the Constitution from such a fate!"

In *Principles of Prussian Administration* (New York, The Macmillan Company, 1913; xiv, 309 pp.), Dr. Herman G. James of the University of Texas presents a description of the Prussian system of administration which will be of distinct service to those who are unable to examine the statutory provisions for themselves. As the author states in his preface, no attempt has been made to criticize the Prussian system or to make comparisons between the Prussian system and any other. His work is in the main a condensation and rearrangement of the statutes which delimit the authority of Prussian administrative officers. Dr. James dismisses as unserviceable any theoretical conception of administration and employs the term to embrace all functions exercised by administrative organs irrespective of the nature of those func-

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tions. His account presents the anatomy rather than the physiology of the Prussian system. The title of the work somewhat belies its scope, for the author deals with particulars rather than with principles. While a more analytical treatment would have been welcome, the absence of the *allgemeine* serves to keep the reader's feet on the ground.

Mr. Charles Francis Adams publishes his recent address before the American Society of International Law, under the title, *The Monroe Doctrine and Mommsen's Law* (Boston, Houghton Mifflin Company, 1914; 43 pp.). Ascribing the authorship of the Monroe Doctrine to John Quincy Adams, the author then shows it as an earlier formulation of what he calls "Mommsen's Law," i. e. the absorption by a state of "its neighbors who are in political nonage," and by a civilized people of its "neighbors who are in intellectual nonage."

Viscount Hythe (Lord Brassey) reprints his *Problems of Empire*, with a number of added articles and addresses that he has published during the past twelve years, under the title *Problems of Empire: The Faith of a Federalist* (London, Longmans, Green and Company, 1913; xvi, 217 pp.). The chief topics considered are imperial finance, defense and form of government. Parliamentary government, Viscount Hythe maintains, is breaking down under the strain of dealing with the affairs of the Empire, the United Kingdom, and England, Scotland and Ireland severally. As a remedy, and as the essential condition to effective imperialism, he urges a separate parliament for each of the constituent parts of the United Kingdom. Lord Grey contributes an appreciative foreword endorsing the federal scheme.

"The natural way to learn history is not to pore over introductory primers or general text-books, but to study the records of a familiar countryside or town, whether they be written on vellum and kept in the muniment chests of church hall and council chamber, or be traced in furrow and fence, cob and thatch, bricks and mortar over the face of the land." This sentence is on the opening page of *A Manor Book of Ottery Saint Mary*, by C. D. and M. Whetham (London, Longmans, Green and Co., 1913; vi, 183 pp.). There are no more valuable contributions to the social history of England than the studies of isolated villages and parishes which have appeared in the last two or three years, as laboratory studies in the great problems of enclosures, industrial revolution, capitalistic agriculture etc. This book, however, is constructed on a plan of its own. Some seventy-five pages are taken up with a general social history of England into which is set the story of the manor. Then follows the text of a copy of the entries in the record of the manor-court, that richest of all sources for mediæval

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social history. A short summary of the survey renders the material easily accessible. The general introduction is clearly written, and based on good manuals. The book is a useful addition to English history.

With the exception of Mommsen's *History of Rome*, few works of German scholarship on the life and history of the Roman people have gone through as many editions as has that of Dr. Ludwig Friedlander, the fourth edition of whose *Roman Life and Manners under the Early Empire* (Volume iv, translated by A. B. Gough, New York, E. P. Dutton and Company, 1913; viii, 718 pp.) has now appeared in English translation. The present translation is from the sixth German edition which came out in 1880–90, although the eighth and last German edition had appeared before the publication of the translation under review. The merits of Dr. Friedlander's work are beyond cavil. With unflagging industry and energy he endeavored at every revision to incorporate into his work the tried results of contemporary scholarship. Thus his treatise has become the *vade mecum* of all students of Roman life and history. The comparison, for instance, of the articles in Pauly-Wissowa with the book of Dr. Friedlander reveals clearly the debt which classical scholars owe to him and shows how little we have progressed beyond the results of his learning in the more general and accessible secondary sources. Yet it must be said that Dr. Friedlander, even, failed to keep up in all fields of research with the latest works. The task is a well-nigh superhuman one. The bibliographical references indicate that in the main Dr. Friedlander's authorities are those before the seventh decade of the past century. As an instance of his failure to keep abreast of archaeological research may be instanced the passages on the Actian Agon and the list of the amphitheatres. The translator might have rendered a distinct service by adding select titles indicating the best recent results on all points insufficiently covered in the German edition. On the whole the translation has been well done and is a considerable improvement on that of the first three volumes. The accuracy of the mechanical work of handling the thousands of references and citations is worthy of remark.

A History of South America, 1854–1904 (New York, E. P. Dutton and Company, 1912; xxviii, 716 pp.), by Charles Edmond Akers, is a reissue of this valuable work, which appeared some years ago, with an additional chapter bringing the history of the several countries down to date. After an introductory chapter, giving a brief Spanish and colonial background, and one on the emancipation of South America, one or more chapters are devoted to each of the countries of South America.

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In these the history of each, since the middle of the last century, is treated with an abundance of detail. Political activity, revolutionary movements, and material and intellectual development and progress are fully set forth. Four chapters deal with the Peruvian-Chilean war and its consequences, while the conclusion gives some general considerations on the future possibilities of South America. It would have improved the book to have placed the material in an additional chapter at the conclusion of the various chapters dealing with the several countries. The volume contains much information not readily obtainable elsewhere in English.

General Rafael Reyes, traveler, statesman, diplomat and ex-president of Colombia, gives an interesting account of his travels in *The Two Americas* (New York, Frederick A. Stokes Company, 1914; xxxiii, 324 pp.). The volume is a translation from the Spanish of the author's *Las Dos Américas*. General Reyes has long been an ardent advocate of better relations between the two races of America, and in furtherance of this idea he has written a work, which is at once an account of his travels, an epitome of his observations in various countries of America and an ardent plea for an *entente cordiale* among them. Chapters are devoted to the Iberian Peninsula and to the author's efforts in Paris and the United States in favor of Pan-Americanism. General Reyes then gives a vivid account of his early explorations in Colombia and Brazil, by which he brought vast areas to the knowledge of civilized man. In the chapter on the Panama Canal is found a brief account of the events on the Isthmus, from the Colombian viewpoint. While believing that Colombia suffered a "moral wrong" "by an attack on her territorial integrity," the author is confident that satisfaction will be rendered by the United States. In the latter part of the volume he quotes extensively from President Wilson and ex-President Roosevelt in support of his view. The remainder of the book is an account of his recent trip to the Latin-American countries for the purpose of observing their progress and advancement. Here he sketches without pretense of completeness, the history, political situation, commercial and industrial progress, material prosperity, and intellectual development of the several countries. An index would add to the value of the work.

Pacific Shores from Panama (New York, Charles Scribner's Sons, 1913; xiv, 285 pp.), by Ernest Peixotto, is an artist-traveler's sketch book of a trip along the west coast of South and Central America. It is an ardent plea in favor of the advantages for winter touring of this delightful region, where the climate is all one could wish and there is much

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to interest the traveler. The volume is written in a fresh and charming style, and in it artistic touch and historic allusion are ably used to whet the imagination of the reader. Vivid glimpses of places, the people and their customs, and travelers' experiences in Panama, Peru, Bolivia and Central America are presented. A profusion of illustrations, reproductions of the author's excellent sketches, makes the book very attractive.

In *University and Historical Addresses* (New York, The Macmillan Company, 1913; viii, 433 pp.) James Bryce has not only left us a remarkable record of how great a service an ambassador may render outside his official duties yet in perfect accord with his official position, but he has also given us truly amazing evidence of the infinite pains he took in the preparation of his public utterances on all sorts of occasions, and fresh proof of his own versatility and genius. Who else can produce a volume of essays, many of them worthy of a prominent place in English letters, and not have a dull page anywhere, while he treats in the most serious fashion of art, literature, history and education in their chief relations to modern life and the mission of English-speaking peoples to the world! Public law and legislation are treated as thoroughly and instructively as the one-time Regius Professor of Roman Law at Oxford might be expected to treat them had he remained at his last instead of playing a leading rôle in world politics these many years. With great tact and sympathy and an almost jealous appreciation of what we may accomplish if we realize to the full the greater opportunities in America, Lord Bryce presents the lessons of English experience in law and politics, and inspires us with the thought that we are to carry forward the civilization that is our common heritage and perform the same human service for the world that is the task set for Englishmen and Americans alike. The two essays on the influence of national character and historical environment on the development of the common law, and the conditions and methods of legislation, ought to be made the text for serious study by every American lawyer and political scientist.

Under the title *Earth-Hunger and Other Essays*, Albert G. Kellar presents a collection of the writings of the late William Graham Sumner of Yale University (New Haven, Yale University Press, 1913; xii, 377 pp.). Most of the material has been published elsewhere at an earlier date but in such a form that it is not now readily accessible. The following essays are printed for the first time: The Teacher's Unconscious Success; The Scientific Attitude of Mind; Earth Hunger; Purposes and Consequences; Rights; Equality; and Economics and Politics. The volume opens with an autobiographical sketch of scarcely three pages, which is most illuminating. Men who did not know Pro-

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fessor Sumner sometimes marveled at his influence over his students. If they will read these three pages they will know the reason. His fierce honesty and his passion for what he believed to be justice are here revealed in a delightfully unconscious manner. Speaking of his ancestry, he says:

> They were all artisans and members of the wages class. It is safe to say that I am the first of them who ever learned Latin and algebra. . . . My father was in every respect a self-educated man. . . . In early life I accepted from books and other people, some views and opinions which differed from his. At the present time, in regard to those matters, I hold with him and not with others.

Everything that Professor Sumner has written is stimulating and worth reading. There is no doubt that the book will fulfil the hope of the editor that it will aid in the effort "to open—wrench open, if you will—the gates of the mind and introduce the impulse to independent thinking."

Professor Fletcher H. Swift in his *History of Public Permanent Common School Funds in the United States, 1795–1905* (New York, Henry Holt and Company, 1911; ix, 493 pp.) has presented the results of detailed and painstaking work in the collection and interpretation of materials difficult of access, which the author began at Columbia University over ten years ago. The question is asked with increasing frequency on all sides: What has been the character and extent of the public support of education in this country? Neither the part played by the federal government, nor that by the various state governments shows any great scientific planning or appreciation of the permanent obligations which an adequate public school system imposes upon either state or nation. Even less is the relative duty of state or nation apparent from Professor Swift's interesting account of the hit-or-miss policy that has gradually come into being in most parts of the country. Undoubtedly we shall soon have to face the question of a more or less complete reorganization of the financial support of public education; and the federal government at whose doors all sorts of educational enterprises are already knocking for support will have to define its policy on the subject of federal aid to education. Dr. Swift's historical researches with their illuminating comments on the sources, amounts and uses of public school funds, both state and national in source, will greatly aid clear thinking on this subject. When it can be said that "twenty-eight million dollars is a conservative approximate estimate of the sums lost or diverted in twelve states," it may well be questioned whether

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the Federal Bureau of Education ought to remain merely an "informational authority" or be given real supervisory powers at least to audit funds emanating from national sources.

The Elements of Child-Protection, by Sigmund Engel, translated from the German by Dr. Eden Paul (New York, The Macmillan Company, 1912; xi, 276 pp.), is a valuable introduction to the comparatively neglected field of child sociology. Mr. Engel is more prepossessed than is absolutely required for a scientific treatment of his topic with interest in the relation of the doctrine of child-protection to the Darwinian theory of survival of the fittest, and to the socialistic critique of capitalism. But nevertheless any one who wishes a "lucid presentation of the *problems* of child-protection," as distinct from a detailed description of the devices that secure it, will find much help in this volume. The discussion covers the biological problem (birth-rate, child mortality, eugenics etc.), the legal problem (relation of the civil to the parental authority), the administrative problem (the civil agencies for caring for children) and the problem of juvenile crime.

The Primitive Family, by Arthur James Todd (New York, G. P. Putnam's Sons, 1913; ix, 251 pp.), is another contribution to the sociology of childhood, utilizing anthropological data, and concerned primarily with the place of the family institution in the care and training of childhood. The standpoint is the evolutionary one: "The family has changed its form and function many times . . . the indications are that it . . . will continue to change." Contrary to what is often said, the function of the primary family is held to have been biologic and economic rather than educational; from the first, education was primarily communal and only incidentally familial. Family training has often been inimical rather than helpful to welfare. We must admit the educational limitations of the family institution.

The Relations of Education to Citizenship, by Simeon E. Baldwin (New Haven, Yale University Press, 1912; 178 pp.), is a good-tempered, discursive and conservative discussion of its theme. One will find in it the reflections of a man of experience in the affairs of life, but little acquaintance with the prevalent spirit of educational philosophy, and, indeed, little philosophy of any kind, save of the older type of moral individualism.

The Education of To-morrow, by Arland D. Weeks (New York, Sturgis and Walton, 1913; xi, 232 pp.), breathes a very different atmosphere, as is suggested by a sub-title: "The adaptation of school curricula to economic democracy." Citizenship is here conceived in social rather than political terms; and industrial functions are regarded

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as of first importance in contemporary American society. Present education is almost unsparingly condemned as "clogged with inert and inherently useless items of knowledge." Although the intention of curricula makers has been to give knowledge that is useful in life, extraneous conditions have deflected their aim from attainment. A readjustment to a "democratized curriculum" is demanded. Samples of such curricula are appended.

Work and Life, by Ira W. Howerth (New York, Sturgis and Walton, 1913; vi, 278 pp.), may, without great unfairness, be regarded as giving us the obverse side of the situation set forth in the previous work. That is to say, it presents the readjustments required in present industrial activities so that they may become truly instrumental to the full development of all members of society. A coöperative social régime, initiated or rather stimulated by social legislation of a "progressive" type, is recommended.

Among the victims of self or society who have been the objects of the serious thought and effort of social workers there is one group which thus far has proved elusive—the group of the homeless men. The doctor, the relief visitor, the criminologist, the nurse, the medical social-service worker, share a reasonable certainty that their clients will be at home on their next call. The social worker who makes the homeless man his special interest, however, can never be sure that he can find his client from one day to the next. It is largely because the homeless man is elusive, because he stays nowhere very long that social workers have been baffled in dealing with him. In *One Thousand Homeless Men* (New York, The Charities Publication Committee, 1911; xxiii, 374 pp.), however, Mrs. Alice W. Solenberger has given us the record of one social worker's attempt to learn something about him and her efforts to apply to him and his needs some of the methods which have succeeded with resident destitute families. The two conspicuous phases of these methods are diagnosis of need based on facts and individual treatment based on the diagnosis and the resources available for upbuilding. The author was for many years a district agent in the Chicago Bureau of Charities. During her incumbency the one thousand men, whose histories provide the material for the book, passed through her office seeking help for the various misfortunes in which they found themselves. In her earnest desire to be of the utmost possible service to them the author came to know about most of them pretty much everything that could have a bearing on their welfare. This knowledge she classified, analyzed and interpreted until as published it is a mine of information regarding a puzzling problem. It is the only work of its kind.

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Mr. Charles W. Dahlinger's *The New Agrarianism* (New York, G. P. Putnam's Sons, 1913; v, 249 pp.) is an "elaboration of the contention that the complaints of public and private shortcomings, while attributable in part to many causes, are yet primarily the result of the unequal progress being made between agriculture and industry and commerce, with a discussion of measures for bringing agriculture to a parity with them." In order the more forcefully to emphasize the importance of the measures proposed, an account of what has been accomplished in this direction in other countries is included. Almost one-half of the volume deals in a more or less general and popular way with the evolution of business and the results of changes which have been made. The sixth and seventh chapters deal with the progress of agriculture in the United States, and the status of agriculture in England, Germany and Denmark. This is largely a running account from public documents and foreign books, intended to show where we stand and what is wrong. Then come the suggestions for improvement of American agriculture, with illustrations from foreign lands. The constructive portion of the book is the development of the author's statement that "there are two forces which seem to be the agencies which have promoted all progress, of whatever nature and wherever made, Education and Money." The basis of the new agrarianism is better agricultural education, and better system in our agricultural credit.

In *Coöperation in Agriculture* (New York, The Macmillan Company, 1913; xvi, 327 pp.) Mr. G. Harold Powell, general manager of the California Fruit Growers' Exchange, offers a book which is of service to agricultural folk contemplating coöperative effort, as well as to those having an academic interest in the subject of coöperation. The author has a broad outlook and never fails to suggest that the economic advantages of coöperation may frequently be quite subordinate to the general social and community interests which are fostered through a common undertaking. He writes with the genuine interest of a man having experience and faith in that of which he speaks. On account of the fact that the purely descriptive parts of the book are sometimes culled at considerable length from government reports and other sources, there are occasional defects in lack of cohesion and unity. Among the subjects treated are changing industrial methods, fundamentals in coöperation, and various legal, administrative, financial and social problems involved in coöperative efforts in agricultural activity. Mr. Powell is clear in explaining to readers less informed than himself the technique of the agricultural process, so that his discussion of the wider problems is free from mystification. The book has an excellent table of contents, index and a serviceable bibliography.

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Another volume on the subject of coöperation is Dr. James Ford's *Coöperation in New England, Urban and Rural* (New York, Survey Associates, Inc., 1913; xxii, 237 pp.). The book consists of two parts, dealing respectively with coöperative associations of working-men and of farmers. The author seems to be interested primarily in the administrative and financial phases of coöperation. For example, in his discussion of coöperation in the dairy industry, he fails to give adequate consideration to problems connected with the milk supply. However, the book is patently an essay on the economic aspects of coöperation in New England, and as such it deserves reading by those interested. The point is made in several places that coöperation is not socialism.

A somewhat unusual work is that by Mr. Douglas Knoop, entitled *Outline of Railway Economics* (London, Macmillan and Company, 1913; xvi, 274 pp.). The book is a revision of the lectures given by the author at the University of Sheffield, and attempts to show how in each particular phase the railway problem is nothing but an application of well-known economic theories. Thus, the author takes up in each case the economic law and then shows how it is applied in the case of railways. Although there is nothing especially new in the book, it may be read with profit. Perhaps the best part of the work is that dealing with railway charges, in which the author points out very clearly that the attempt to make cost or joint cost the explanation of railway rates emphasizes unduly the supply side of the problem as compared with the demand side or the marginal utility. He also restores to its rightful place the doctrine of ability to pay, as influencing the principle of charging what the traffic will bear. Altogether the volume is to be put in the front rank of the works that deal with the theory of railway economics.

The enthusiasts for government assumption of railways will find much to learn in Edwin A. Pratt's *The State Railway Muddle in Australia* (London, John Murray, 1912; viii, 164 pp.). In a series of chapters gathered largely from current newspaper accounts, a most impressive list of shortcomings of the Australian railways is presented. In some cases the picture is rather overdrawn, as in the case of the shortage of tracks and the difference of gauge—difficulties that are not unknown in the case of private railways—as well as in the chapter on the traffic concentration of capitals, which simply represents the results of the application of a particular theory of rates, about which there is abundant opportunity for disagreement in the case both of private and of state railways. There is no doubt, however, that the comparative in-

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efficiency of the Australian railways is clearly set forth. There is an interesting chapter on the recent attempt of the Australian government to get the railway management back into politics from which they were extricated in 1888. The conclusion to be drawn from the book is, however, not the one of the author, that the system of government railways is a warning for England. On the contrary, the only sound conclusion is that just as no form of government, whether democracy or autocracy, is without its evils, so also no form of dealing with the railway problem, whether uncontrolled private railways, government control of private railways, or government management of railways, is without its drawbacks. But the author's exposition may well be pondered by those who believe on *a priori* grounds that government management of railways in a democracy will be attended with a degree of efficiency at all comparable with that of private railways.

Such books as Mr. Samuel O. Dunn's *Government Ownership of Railways* (New York, D. Appleton and Company, 1913; viii, 400 pp.) should do much to remove the mild stigma that technical and academic circles sometimes attach to the "popularizer." His book is a fine example of the good work that can be done with secondary sources, if they are used with thoroughness and judgment. It is, in essence, a comparative study of the railway systems of the world as an aid to solving the question whether public ownership in the United States would be desirable. The spirit of the book is fair and temperate, though the same could not always be said for the sources of certain of the quotations used. The author uses figures freely and intelligibly, and so far as the reviewer has observed, he has resisted the gross temptations to unfairness that beset the user of statistics. In the comparisons of costs and efficiency the thing most needed is an indication how much ought to be allowed for the differences in length of haul, density of traffic and character of service which make it so difficult to draw confident conclusions. The author's decision is clearly against public ownership. In view of the renewed discussion of this topic, the book is timely and should be of interest to a wide circle of readers.

Mr. Howard Elliott's *The Truth About the Railroads* (New York, Houghton Mifflin Company, 1913; xxii, 260 pp.) is a collection of speeches presenting rather elementary facts about the railroad business and making a plea for mutual sympathy and fair dealing between the carriers and the public. One chapter contains remarks made before the Senate Committee on Interstate Commerce in 1905, and this is naturally a more careful bit of argument than are the more popular addresses. Mr. Elliott is opposed to giving the general rate-making

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power to a commission (this previous to the passage of the Hepburn Act) on the ground that to do so would lead to flat mileage rates. He seems to ignore other systems of charges based on scientific allowance for the various elements of cost—distance included. We are told that earnings must be higher if capital is to be attracted to make needed extensions. "Take away the hope of profit and the individual will not take the risk of loss" (page 67). We are also told that the funds, if not contributed out of earnings, must be borrowed (page 66), but we are not told where the "hope of profit" to the prospective bondholder comes in. Railroads want higher rates to build up a surplus earning power that will enable them to float bonds at lower rates of return than at present, not higher. And if bonds are the only securities to be issued in the future what will become of the proportion of bonds and stocks? The bonds in the hands of the public are vastly more than the stocks already—a fact which is enough in itself to account for some difficulty in marketing new issues. Mr. Elliott admits abuses of private cars and private spur tracks, but believes they will cure themselves. His general attitude is that of one who has worked hard at a big job and who feels that he can do it better if laws do not invade his province and hamper his arm.

The character of Professor A. M. Sakolski's *American Railroad Economics* (New York, The Macmillan Company, 1913; xii, 295 pp.) is not just what the title would suggest, save to those who are accustomed to the modern tendency to give the name "economics" to studies of the arts of private finance and successful industrial management. Written primarily as a text for investors, the book contains much that should be a part of civil-service tests for responsible positions in the work of public regulation. It includes a survey of railroad systems and a study of the elements of economical construction and operation, traffic statistics, finance and accounts. The theory of rates and public regulation are dismissed in a short preliminary chapter with conclusions that are rather negative. The material is well organized and the treatment is practical, clear and concise, although perhaps the discussion of profit-and-loss accounts could be made plainer by some rearrangements. It is not easy to explain the intricacies of corporate accounting so that he who runs may read. Much is made of the principle that in judging the wisdom of new constructions or improvements the test is financial profit, not technical perfection, and it is evident that there is no formula for applying this test. Nowhere in the study of accounts and statistics is there any such test formula that will obviate the need of a lot of common sense to make the figures give true answers

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to the very varied questions that arise. The book is not free from flaws of rhetoric or from occasional doubtful statements. It might be hard to prove, for example, that the tapering of freight rates is really "due almost entirely to uniformity of terminal charges" (page 147). However, it is a very good book, and should prove useful as handbook or as text, subject to possible changes in the form of accounts prescribed by the Interstate Commerce Commission.

The publications of the La Salle Extension University non-resident course in interstate commerce are intended for the technical training of traffic men. Professor E. R. Dewsnup's *Freight Classification* (Three volumes. Chicago, La Salle Extension University, 1913; 304 pp.) deals with the development and organization of the present system of classifications, the boundaries of the various classifications and the traffic to which each applies, the rules as to carload shipments, packing, loading, special services etc., and then passes on to matters of more general interest, treating the history and problems of uniform classification, the principles underlying the various rules and requirements, and the theory of rates, so far as that is involved in classification. The series concludes with a bibliography and a separate section of appendixes, consisting chiefly of lists of the stations covered by the group-names used in the traffic phraseology, and tables showing the territorial application of the various classifications in detail. A short glossary of technical terms and abbreviations is also included. The author believes that uniform classification is coming, and that the result will be great expense and disturbance, and a multiplication of commodity rates, all of which leads him to "doubt whether the change would be worth the trouble." In the theoretical section of the work, Professor Dewsnup uses well-chosen citations from the rulings of the Interstate Commerce Commission. Perhaps he is unduly pessimistic as to the possibility of making cost statistics of some practical use in fixing relative charges.

Mr. J. F. Morton's pamphlet on *Routing Freight Shipments* (Chicago, La Salle Extension University, 1913; 27 pp.) is a guide to shippers, showing methods of determining the quickest and safest route. They must study the number and kind of transfers needed and be on guard lest the railroads, for purposes incidental to their own traffic agreements, carry the freight around unnecessary loops or perhaps through the destination, around a loop and back a second time. The pamphlet is very condensed and assumes that the reader is familiar with the idiom of the trade.

Stock Exchanges have been the cause of a considerable literary pro-

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duct in the last few years, owing to the agitation for corporation and financial reform. In *A Handbook of Stock Exchange Laws* (Garden City, Doubleday, Page and Company, 1914; ix, 290 pp.) Mr. Samuel P. Goldman, of the New York bar, has made a helpful contribution to this literature. Mr. Goldman deals in his book with the New York Stock Exchange alone, but the preëminence of that institution justifies such selective treatment. He sets forth not only the relevant laws and decisions of the state of New York but also the constitution and by-laws of the Stock Exchange itself, with the court interpretations that have from time to time been given of this constitution. The book is written with lawyer-like directness and precision and is well indexed.

A technical treatise that runs through three editions in eight years must be meritorious. Messrs. F. B. Kirkbride and J. E. Sterrett may therefore justly conclude that they have achieved a work of merit in their book, *The Modern Trust Company* (New York, The Macmillan Company, 1913; xiii, 319 pp.), the fourth edition of which has recently appeared. Developments in the field of legislative restriction of trust companies came so fast in the years following the panic of 1907 that much of what appeared in the earlier editions proved out of date and misleading, and necessitated revision if the book was to hold its place as the standard authority. Besides bringing the material down to date, the authors also revised the bibliographical list. As heretofore, the book is indispensable to the student of American banking.

The series of lectures delivered by Mr. Hartley Withers to members of the Institute of Bankers has been published under the title of *Money Changing* (New York, E. P. Dutton and Company, 1913; viii, 183 pp.). The material, though for the most part familiar, has been presented with such felicity and humor that, in spite of the technical nature of the subject, the volume may be read with entertainment as well as profit.

The Federal Reserve Act has attracted much attention abroad because of the influence on the world's money markets which the reform of the American system and the probable release of gold in consequence thereof is certain to exercise. In Germany Dr. Richard Hauser has prepared an analysis and exposition of the act under the title *Amerikanische Bankreform* (Jena, Gustav Fischer, 1914; 99 pp.). He gives a proper setting for his discussion by describing the American system as it still exists, setting forth the evils and weaknesses which past experience has disclosed. He refers also to the provisions of the so-called "Aldrich Plan." His discussion of the new act, while brief, is more than a mere translation, a verbatim translation as a matter of

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fact being supplied in the appendix. Eight pages (52–60) are given over to a critical consideration of the prospects of the new system. While Dr. Hauser finds some points to criticize, he believes that on the whole it represents a real achievement.

An exceedingly timely book is *The Operation of the New Bank Act* by Thomas Conway, Jr., and Ernest M. Patterson (Philadelphia, J. B. Lippincott Company, 1914; viii, 431 pp.). This book appeared a few weeks after the new Federal Reserve Act received the signature of the president, and in some ways it is rather remarkable that so large and comprehensive a work could be written about an act that was not yet in operation. This, of course, robs it of a certain value, for as the book was published before the regional reserve banks had been selected, the discussion as to the pros and contras is now entirely out of date. Much the same is true of the conjectures as to what will happen in certain contingencies according as the Federal Reserve Board decides one way or the other. With these necessary limitations, however, the book is highly to be recommended as a convenient, accurate, and sensible commentary on the new law.

Mr. A. Fingland Jack's *An Introduction to the History of Life Insurance* (London, P. S. King and Sons, 1912; xii, 263 pp.) is a modest and well-written attempt to trace the origin of life insurance, on the one hand to the guilds, and on the other to the mediæval system of rents. Short chapters are added on the *montes*, on gambling insurance, and on the friendly societies. It is a useful and distinctly attractive compendium.

The Economics of Business, by Norris A. Brisco (New York, The Macmillan Company, 1913; xiv, 390 pp.), deals with a considerable portion of the entire field of business organization. There are chapters dealing with types of business organizations, principles of management, factory efficiency, buying, selling, principles of advertising etc. The attempt to deal with so wide a variety of topics of necessity results in a cursory treatment of all. Nearly all the topics discussed have received more thorough and satisfactory treatment from other authors. The elementary character of the volume renders it unsuitable for class use except perhaps in high schools. It may be doubted, too, whether the volume will aid greatly in the design to "assist business men in their efforts to obtain greater efficiency."

In a volume on *Mercantile Credit* by Mr. J. E. Hagerty (New York, Henry Holt and Company, 1913; xiii, 382 pp.) two-thirds of the space is devoted to the consideration of the origin, development and present status of mercantile credit. After a discussion of the

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theory, history, instruments and kinds of credit, attention is devoted to the actual operation of mercantile credit organizations, including discussions of the credit man, the credit office, sources of credit information, adjustment bureaus, collections and credit men's associations and their work. Much of the material presented is already familiar to students of money and banking and to well-informed business men. The author has pointed out the numerous defects in mercantile agency service. He tends somewhat to overvalue the mercantile agency as compared with other sources of mercantile information. The second part of the volume deals with legislation relating to mercantile credit. There are chapters on the various federal bankruptcy laws which have been in force, and on state insolvency legislation. While the connection between the two parts of the volume is slight, the chapters on legislation constitute a useful supplement to the preceding discussion. The book on the whole is a valuable piece of work which will prove useful to students and teachers of business administration.

The striking merits of Professor Philippovitch's *Grundriss der politischen Oekonomie* were proclaimed in this QUARTERLY (volume ix, page 144) twenty years ago when the first edition appeared. It is gratifying to record the increasing appreciation which the work enjoys, as attested by the continuous call for new editions. (*Erster Band: Allgemeine Volkswirthschaftslehre*, 9th edition, xii, 499 pp.; *Zweiter Band: Volkswirthschaftspolitik, Erster Theil*, 6th edition, x, 372 pp.; *Zweiter Theil*, 4th edition, xi, 442 pp. Tübingen, J. C. B. Mohr, 1911–1912). Although himself a distinguished representative of the Austrian school, Philippovitch is too broad in his training and sympathies to under-rate the importance of the contributions to economics of the English classical economists or of his contemporaries of the German historical school. His treatment is eclectic in the best sense—descriptions of contemporary conditions and economic history being constantly availed of to limit and correct the conclusions of economic theory. Thus the book is a mine of information with reference to the facts of economic life past and present, as well as a judicious presentation of the latest conclusions and tendencies of economic speculation. It is characteristic of the author's sympathy with the social reform movements of the day, that he devotes over a third of his two volumes on Economic-politics (*Volkswirthschaftspolitik*) to measures and policies designed to improve the condition of wage-earners. The treatment of subjects like the European labor movement, collective bargaining, labor legislation, and social insurance is particularly full and satisfactory. There is also a brief but informing section on poor relief. As the

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prominence given to problems which particularly concern wage-earners indicates, the author shares with most contemporary German economists the conviction that the chief aim of governmental policy in the economic field should be not more production, but better distribution. This accords with the view, which he also makes prominent, that the test of economic progress is less the heaping-up of wealth than the all-around enrichment of human life. For students who desire an authoritative statement of the present position of economics the book is cordially to be commended.

In a portly volume of over 500 pages on Vauban, Dr. Fritz Karl Mann deals not only with the celebrated *dixme royale*, but with the whole problem of the Mercantile System. This is apparent from the title, *Der Marschall Vauban und die Volkswirtschaftslehre des Absolutismus* (Munich, Duncker & Humblot, 1914; xvi, 526 pp.). The second half of the work is devoted to a discussion of Vauban's place in the history of economic thought. This leads the author to discuss the Mercantile system in general. He takes the position that there is no such thing as the Mercantile system of economic thought and that what passes under that name is nothing but a caricature of the facts. He suggests as a substitute the term "the economic doctrine of absolutism" and points out that the economic theories of the seventeenth and eighteenth centuries differ with the varying economic problems in the separate countries. Although Dr. Mann in our opinion goes entirely too far in denying the similarity of certain fundamental doctrines in all the European countries, his book is exceedingly suggestive as well as scholarly, and will no doubt play an important rôle in the future history of economic doctrine, which, as Dr. Mann truly says, has yet to be written. The more special study devoted to Vauban rests on a broad foundation. Among the five appendices are two devoted, respectively, to du Radimont, the chief critic, and to Pescherinus, the chief German follower, of Vauban.

The tendency of French students to select for their doctor's dissertations studies of important names in the history of French economic doctrine or practice is illustrated afresh by C. Vacher de Lapouge's monogragh on *Necker, Économiste* (Paris, Marcel Rivière et Cie, 1914; 316 pp.). It is remarkable that of all the many works contemporaneous and recent that have been published on Necker none has hitherto been devoted especially to his economic doctrines. M. Lapouge attempts to remedy this deficiency, and gives a good analysis of Necker's views on well-nigh every practical problem of the day; but even he is compelled to confess that Necker made no pretentions to a

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knowledge of economic principles, in this respect forming a great contrast to his illustrious predecessor, Turgot. Professor Dubois of Poitiers furnishes a preface, in which he points out that although Necker was "un grand ministre" he was not "un grand novateur."

Alfred de Foville, the well-known statistician, died in Paris in 1913 at the age of seventy. M. Fernand Faure, professor of statistics in the Faculty of Law at Paris, has published a useful little sketch entitled *Alfred de Foville: Avec une Bibliographie complète de ses travaux et un Portrait* (Paris, Librairie de la Société du Recueil Sirey, 1914; 107 pp.). As professor at the Conservatoire des Arts et Métiers, as well as at the School of Political Science; as the perpetual secretary of the Academy of Moral and Political Sciences; as head of the Bureau of the Mint; and as a member of the Cour des Comptes, M. de Foville filled a number of important academic and administrative positions, the influence of which is reflected in the great variety of his writings. The bibliography, which occupies almost half the entire volume, was found among the papers of M. de Foville himself and contains a list of all his short writings and newspaper articles, as well as of his more ambitious publications. Professor Faure furnishes an attractively written sketch of de Foville's life and works.

It is perhaps not quite so familiar as it ought to be that the well-known sociologist, Professor DeGreef of Brussels, started out in his scientific career a quarter of a century ago with works on economics and finance. He now returns to his old love with a treatise on finance entitled *L'Économie Publique et la Science des Finances* (Brussels, Larcier, Paris, Félix Alcan, 1912; two volumes, 351, 245 pp.). The work, however, is only an introduction to the subject, occupying considerably less than half of the space taken by the authoritative treatise of Jèze on the same subject; and if the truth be told, the treatment is not quite up to date. The problems which Professor DeGreef discusses are still the old problems of a generation ago, treated largely in the same old way, with little reference to some of the newer literature. Consequently, although the book is well written and interesting, it is not likely to displace the other French books on finance.

The fifth edition of Dr. Cunningham's *The Growth of English Industry and Commerce in Modern Times* (Cambridge, University Press, 1910, 1912; two volumes, xxxviii, 608 pp., and xii, 609–1039 pp.) seems to be for the most part simply a reprint of the fourth edition of five years earlier. This probably explains the fact why no reference is made to some of the important literature that has appeared in the interval, as, for instance, the monumental works of Mr. George Louis Beer on the colonial policy of Great Britain and others that might be mentioned.

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The vicissitudes of the currency system in India were in earlier years matters of intense interest to monetary students. Since the decline in the practical importance of the bimetallic theory, however, that interest has perceptibly waned. Nevertheless Professor J. M. Keynes's book on *Indian Currency and Finance* (London, Macmillan and Company, 1913; vii.; 259 pp.), while of primary interest to English students, contains much that is useful to Americans. The first chapter, dealing with "The Present Position of the Rupee," is especially noteworthy. Professor Keynes (page 6) takes the generally-accepted position that the rupee is a legally inconvertible fiat coin whose value is fundamentally determined by the demand for it in relation to the available supply, but that this value is prevented from going much above the arbitrary figure of d. 16 through the legal necessity of paying rupees for sovereigns, and from going below d. 16 through the administrative practice of giving (usually, but not always) gold for rupees and of selling at a fixed price in Calcutta bills of sterling exchange payable in London. Professor Keynes's second chapter on "The Gold Exchange Standard" is an interesting study of what is really involved in this system as a means of maintaining the parity between the circulating medium and gold. Other chapters discuss paper money and banking in India, the use of "Council Bills" etc.

Sir David Barbour, of India, has lent the great weight of his name to a defence of the quantity theory in his *The Influence of the Gold Supply on Prices and Profits* (London, Macmillan and Company, 1913; ix, 104 pp.). His general position may be summed up in the following quotation:

> Important as are the limitations to the quantity theory of money involved in the assumption that other things are equal, the man who has to deal with monetary questions can no more disregard the quantity theory in any practical measures he may advocate than the astronomer can neglect the law of gravitation in studying the movement of the heavenly bodies.

As a consequence Sir David agrees with the majority of English-speaking economists in regarding the increased output of gold as by all means the most important cause of the present high price level.

The causes of economic depressions have been variously explained, and many remedies have been suggested for their elimination. But in *Industrial Depressions* (New York, Frederick A. Stokes Company, 1911; xiv, 287 pp.) George H. Hull, a well-known iron merchant, takes issue with what he calls the "synthetic" theories and presents an "analytical" theory of his own. In brief, he attributes industrial

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depressions to the high prices of iron and other "construction" materials, the demand for which tends to exceed the capacity of the country to supply it in "boom" times. The sensational advances in prices cause investors to be hesitant. With the decline of this investment demand, the seed of depression is sown. The author supports his reasoning by a careful analysis of market conditions and prices during periods of prosperity and of depression. The appendix presents a series of illuminating statistical tables and diagrams. The remedy suggested is careful statistical studies and reports by a responsible governmental bureau of unfilled orders, completed construction, prices etc. When full information is available, the normal economic tendencies to avoid loss and to seek gain can be relied on, thinks the author, to prevent demand from increasing beyond the capacity of the country to produce "construction" materials and thus also to prevent prices from rising to the "boom" levels on which demand itself tends to be destroyed. As a contribution to the literature of depressions, Mr. Hull's book is important and suggestive. It reflects careful and accurate thinking and is exceptionally well written.

A useful purpose has been served by Mr. Bruce Wyman's *Control of the Market* (New York, Moffat, Yard and Company, 1911; vii, 282 pp.), notwithstanding the fact that the present trend in Washington is not in the direction which he advocates. His main thesis is that the solution of the trust problem is to be found in recognition of monopolistic combinations as affected with a public interest to an extent that justifies, not their dissolution, which he regards as economically undesirable, but their strict regulation. He supports this contention with a full survey of leading cases and a less exhaustive consideration of the pertinent economic facts. Whatever may be thought of the necessity or desirability of regulated monopolies in connection with manufacturing and mining industries, every reader will concede that the legal basis for such a policy, if ever adopted, is to be sought in the direction pointed out by Mr. Wyman.

A welcome addition to the literature on the *Compulsory Arbitration of Industrial Disputes* is the book bearing that title by Mr. William Frederick Hamilton, based on personal observations made in New Zealand and Australia in 1912 (London, Butterworth and Company, 1913; vi, 125 pp.). Following a careful summary of the legislation creating the systems of wage-regulation of these countries, the author discusses the reasons for the relative success of compulsory arbitration in New Zealand and its relative failure in Australia. From an instructive comparison of labor conditions in the three countries, he draws the

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conclusion that the best next step for the United Kingdom is the extension of the system of wage-boards for the determination of wages, hours etc., until it embraces all the industries essential to the welfare of the country. Requiring the organization of such boards and giving binding force to their decrees would, he believes, be a more efficacious means of preserving industrial peace than is the more radical plan of compulsory arbitration.

Seldom does so genuinely useful a book appear as the new volume of readings in economics edited by three members of the teaching staff in the University of Chicago, L. C. Marshall, C. W. Wright and J. A. Field. It is entitled *Materials for the Study of Elementary Economics* (Chicago, The University of Chicago Press, 1913; xvii, 927 pp.). Within less than a thousand pages it includes 267 excerpts gathered from widely scattered sources. Clippings from the financial journals nestle down beside extracts from government reports; and political platforms are close neighbors to classic bits of economic description and reasoning. The aim of the editors has been, says the preface, "to acquaint the student with economic principles as they are manifested in the tangible facts of economic life," and to afford "a background of information which the systematic treatises on economics can hardly give and which the teacher certainly cannot assume that his students will possess." The readings had been subjected to the test of classroom use before publication, and as a result there is practically no dead timber in the book. A small part of the material, it is true, will lose in interest if not kept up to date, but there should be a large enough demand to make possible new editions almost every year.

The Economic Utilization of History and Other Economic Studies (New Haven, Yale University Press, 1913; viii, 220 pp.) is a collection of articles and addresses by Professor Henry W. Farnum of Yale University. Almost all of the studies have already appeared in print, but the author has revised his material and given it a logical and unified arrangement. The first three chapters are concerned with methodology, and the remainder of the book treats of the application of these methods in the several fields of labor legislation, business organization and charity.

Professor Raynor G. Wellington of the University of North Dakota is the author of a substantial and interesting study entitled *The Political and Sectional Influences of the Public Lands, 1828–1842* (Cambridge, Riverside Press, 1914; 131 pp.). It is evidently a doctor's dissertation prepared under the direction of Professor Turner. The monograph gives a clear picture of the important rôle that was played

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by the public lands in the political discussions of the day and brings out clearly the divers sectional interests and the political compromises that resulted therefrom. The monograph is a distinctly creditable addition to the works on American economic history.

The latest volume of the Hart, Schaffner & Marx prize essays is the study by Harry Edwin Smith of Cornell University, on *The United States Federal Internal Tax History from 1861–1871* (Boston and New York, Houghton Mifflin Company, 1914; xix, 357 pp.). There is nothing distinctively new or startling in the work, which is a plain, unvarnished but trustworthy account of the facts, based largely on the *Congressional Globe* and the government reports. A series of elaborate appendices occupies forty pages, and there is a very full bibliography.

Dr. Gustave Lippert of Austria has devoted five years to the preparation of a huge volume on the international law of finance under the title of *Das Internationale Finanzrecht* (Trieste, M. Quidde, 1912; 1152 pp.). The volume purports to be a systematic exposition of the important fiscal provisions of well-nigh all civilized nations, classified under convenient headings and dealing with all the important phases of revenue, of expenditure and of the budget. Perhaps the sections most significant to American readers will be the two hundred pages devoted to double taxation. To all those interested in foreign finance the book will be an indispensable work of reference.

Professor Charles Gide's smaller book on Economics has been known to English and American readers for several decades. His more recent larger *Cours d' Économie Politique* has now appeared in a translation prepared under the direction of Professor William Smart, by Constance H. M. Archibald, under the title of *Political Economy* (London, G. G. Harrup and Company, 1914; xiii, 762 pp.). The translation is made from the third French edition, and is well done. All the distinctly French illustrations have been purposely retained. The new work will no doubt be as favorably received as was its smaller predecessor.

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